



ALFRED STANLEY A. ROY

THE BHOWAL CASE

(HIGH COURT JUDGMENTS)

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TO
MR. JUSTICE CHARU CHANDRA BISWAS
WITH GRATITUDE FOR MUCH KINDNESS

HIGH COURT OF JUDICATURE AT FORT WILLIAM IN BENGAL

APPEAL FROM ORIGINAL DECREE No 1 OF 1937

From a Decision of
MR PANNALAL BASU,

ADDITIONAL DISTRICT JUDGE, FIRST COURT, DACCA

In

TITLE SUIT No 38 of 1935

(Originally numbered as Title Suit No 70 of 1930 of the First Court, and then
as Title Suit No 5 of 1933 of the Fifth Court, of the Subordinate Judge, Dacca)

DATES

Suit Instituted	24th April, 1930
Hearing commenced	27th November, 1933
Hearing concluded	20th May, 1936
Judgment of Trial Court	24th August, 1936

Appeal presented to High Court	5th October, 1936
Hearing commenced	14th November, 1938
Hearing concluded	14th August, 1939
Judgment of High Court	25th November, 1940

Judges of the Special Bench :

THE HON'BLE JUSTICE SIR LEONARD WILFRED JAMES
COSTELLO, Kt , M A , LL B , Barrister-at-Law
THE HON'BLE MR. JUSTICE CHARU CHANDRA BISWAS,
CIE, M A , B L
THE HON'BLE MR. JUSTICE RONALD FRANCIS LODGE,
B A , I C S.

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Mr Phani Bhusan Chakravarti,
Mr Pankaj Ghose,
Mr Sanjib Chaudhuri and
Mr P. B Mukherjee.

Counsel for the Respondents :

Mr B C. Chatterjee,
Mr Bankim Mukherjee,
Mr Atul Gupta,
Mr J C. Gupta,
Mr Nagendranath Bose,
Mr Arabinda Guha,
Mr Nirmal Chakravarti and
Mr Muktipada Chatterjee.

PREFACE

Few cases have been brought before the courts which have aroused such widespread public interest as what is popularly known as the Bhowal Sannyasi's case, and no apology is, therefore, needed for this attempt to make available for the first time the full text of the judgments of the Special Bench of the Calcutta High Court which disposed of the appeal in favour of the *sannyasi* claimant.

The Special Bench consisted of three learned judges—the Hon'ble Mr Justice Costello, the Hon'ble Mr Justice Biswas and the Hon'ble Mr. Justice Lodge. The senior judge, however, went away on leave after the hearing was over and after having prepared only a part of his judgment. The judgment was finally completed by him in England, and he sent it out from there to be pronounced in Court by his colleagues. A new Rule was in the meantime added to the Civil Procedure Code expressly authorising such procedure. The fact, however, that the final decision of the learned judge was not known even to his colleagues till the moment his judgment was actually read out served to add an element of unusual interest to a case which was not already lacking in extraordinary features. The final issue in the appeal was in fact left hanging in the balance for quite a long time even after all the three judgments had been delivered.

Counsel for the defendants is reported to have announced the intention of his clients to take the matter in appeal to the Privy Council. It would be some time, therefore, before the curtain is finally rung down upon the legal drama, the first scenes of which opened at Dacca more than eleven years ago.

Should the decision of the Special Bench be upheld in appeal, the Bhowal case would live in legal history as probably the first instance in which a supposed impostor would have successfully established his claim before a judicial tribunal.

The facts of the case are already so well-known, and have been set out with such fulness in the judgments which are now reported, that it is not necessary to attempt to re-capitulate them again. Suffice it to say that the story is one of intense human interest, which cannot but firmly grip the reader's mind, as he sees it unfolded before him in all its varied and bewildering ramifications.

It remains now to express the Editor's acknowledgments for all the help and kindness he has received in the preparation of this volume.

In the first place, he is deeply indebted to the learned judges of the Special Bench for having made true copies of the judgments available for publication. His special gratitude is due to the

Hon'ble Mr Justice C C Biswas, C I E , for his kindness in having read the final proofs This itself should be a guarantee of complete accuracy

For convenience of reference, appropriate paragraph headings have been inserted, but these do not form part of the judgments as pronounced

The Editor desires next to express his gratitude to Mr Suresh Chandra Majumdar, Managing Director of the Ananda Bazar Patrika, Limited, for the facilities he rendered in getting the book through the press Considerable help has also been derived in this connection from Mr Susil Kumar Biswas, Mr Parimal Mukherjee and Mr Nirmal Chakravarti, Advocates Special thanks are due to the last-named gentleman for having undertaken the preparation of the Index, which, though not exhaustive, will, it is hoped, be still found quite helpful

Mention should also be made of Mr Ajit Kumar Chatterjee, for general secretarial assistance rendered by him

In conclusion, the Editor should like to say that he will feel more than amply rewarded, if the public appreciate the labours of those who have so ungrudgingly given their co-operation in bringing out this volume

SACHINDRA CHANDRA DAS GUPTA

The 1st July, 1941

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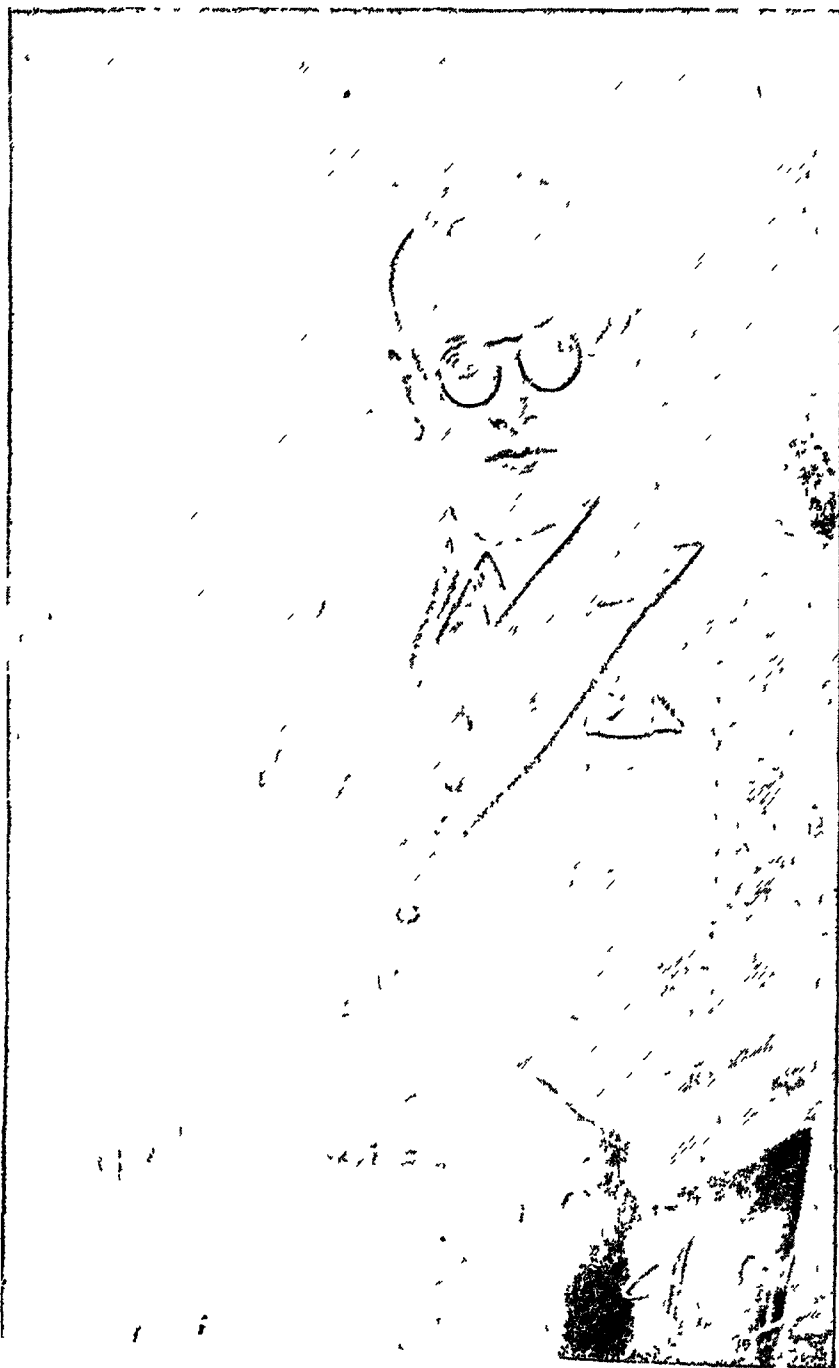
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ERRATA

Page 139, 4th line from top	<i>for</i> "Mukunda", <i>read</i> "Dr Ashutosh Das Gupta"
Page 193, 17th line from top	<i>for</i> "Nath", <i>read</i> "Chandra"
Page 259, 17th line from top	<i>for</i> "Chatterjee", <i>read</i> "Chaudhuri"
Page 421, 8th line from bottom	<i>for</i> "version", <i>read</i> "vision"



MR JUSTICE BISWAS

Present :

The Hon'ble Mr. Justice Costello,*

The Hon'ble Mr. Justice Biswas,

The Hon'ble Mr. Justice Lodge.

APPEAL FROM ORIGINAL DECREE NO 1 OF 1937

SREEMATI BIBHABATI DEVI and others

(Defendants Nos 1, 3 and 4)

Appellants

Vs

RAMENDRA NARAYAN ROY and another

(Plaintiff and Defendant No. 2)

Respondents.

HEARD —1938—November 14—18, 21—22, 28—30;

December 1—2, 5—9, 12—16, 19—22,

1939—January 3—6, 9—13, 16—20, 23—24, 27, 30—31,

February 3, 6—10, 13—17, 20—22, 27,

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May 1—2, 4—5, 8—11, 16—19, 22—24, 26, 29—30,

June 1—2, 5—7, 9, 12—16, 19—23, 26—30,

July 3—7, 10—14, 17—21, 24—28, 31,

August 1—4, 7—11, 14

JUDGMENT—1940—August 20 to 24, 27 to 29,

November 22, 25

* Absent during delivery of judgment

PREFATORY REMARKS

BISWAS, J —Before proceeding to deliver judgment in this appeal, I deem it my duty to state that the senior member of the Bench which had heard the appeal, the Hon'ble Mr Justice Costello, is now on leave in England, and unable, therefore to be present in court to pronounce judgment personally. He has, however, sent in a written opinion from England, which I propose to read in open court in due course. A Rule has recently been framed by this court under the rule-making power conferred by section 122 of the Code of Civil Procedure, which authorises any judge of the High Court to pronounce the written judgment or opinion of any other judge signed by him when such judge continues to be a judge of the court, but is prevented by absence or any other reason from pronouncing that judgment or opinion in open court.

I ought to add that neither my learned brother Lodge J nor I have so far seen the judgment of our learned colleague, and we are not, therefore, aware of the decision he has recorded. I now proceed to read the judgment I have prepared.

BISWAS J'S JUDGMENT BEGINS

This is an appeal against the judgment of Mr Panna Lal Bose, First Additional District Judge, Dacca, which he delivered on the 24th August, 1936, decreeing the plaintiff's suit with costs, after a hearing extending over a period of two years and nine months.

The question raised in the suit was a comparatively simple one, whether the plaintiff was the person he claimed to be, but it involved consideration of a vast and variegated mass of facts on almost every one of which the evidence was sharply divided. Fortunately, the task of the appellate court has been considerably lightened by the very helpful judgment of the trial court which, in my opinion is remarkable as much for its clarity and precision as for its full and fair treatment of the evidence.

So completely and so determinedly were the parties at variance with each other on almost every point, trivial or important, that it is somewhat difficult to present a narrative of facts which may be regarded as admitted or undisputed. It is necessary, however, to attempt in broad outline a general sketch of the story as told on one side or the other in order to appreciate the evidence in the case, or the contentions which were put forward either in the court of first instance or in the appellate court.

PLAINTIFF'S CASE

Stated in the barest form, the plaintiff's case is that he is Ramendra Narayan Roy, the second Kumar of Bhowal, who is supposed to have died at Darjeeling as far back as the 8th of May, 1909, but did not actually die, and who reappeared after an absence of nearly twelve years at a place known as Buckland Bund at Dacca under circumstances which eventually led to

BHOWAL CASE

his being recognised and accepted as the second Kumar by the general public as well as by his relations excepting only a few. Amongst these few who refused to recognise him was his wife Bibhabati Devi who had in fact claimed to succeed to his estate upon his supposed death as his sole surviving widow and heiress under the Hindu Law. This lady, it is said, was completely in the hands of her brother one Rai Bahadur Satyendranath Banerjee,—a name which figures very prominently in these proceedings,—who was admittedly in *de facto* enjoyment of her estate, and judged by ordinary canons of human conduct, would have the strongest motive for denying the plaintiff's identity.

The plaintiff alleges that during his illness at Darjeeling, poison had been administered to him in the course of treatment, and while he lay unconscious as the result thereof, he was taken for dead and his body was carried to the local *sasan* or cremation ground in due course on the night of the 8th May, 1909. At the *sasan*, however, on account of a sudden burst of rain and storm, the members of the cremation party dispersed in all directions for temporary shelter, leaving the body there, and when they returned they found the body missing. Two or three days later when the plaintiff regained consciousness, he found himself amid hills and jungles surrounded by a number of *Naga Sannyasis* (literally, nude ascetics) who tended and nursed him and brought him back to health. He wandered about from place to place with this party of *sannyasis*, until about a year before his return to Dacca he parted company with them at a place called Braha Chhatra in Nepal and wended his way from there back to Dacca through various places.

At the time of his supposed death the second Kumar of Bhowal was one-third proprietor of an extensive estate spreading over several districts in East Bengal, which has been described as the Bhowal Raj, being the second of three sons of the late proprietor Raja Rajendra Narayan Roy who had his family seat at Jaidebpur, a village about twenty miles from Dacca, and who died on the 26th April, 1901, having executed a deed of trust and a will before his death. As an effect of these documents, the estate vested upon his death in his widow Rani Bilasmoni Devi in trust for his three sons who were known as the first Kumar or Bara Kumar, the second Kumar or Mejo Kumar and the third Kumar or Chhota Kumar respectively. The names of the first and the third Kumars were Ranendra Narayan Roy and Rabindra Narayan Roy respectively. Raja Rajendra Narayan Roy also left him surviving three daughters, Indumoyee, Jyotirmoyee and Tarinmoyee, the first two having been born before and the last after the birth of the three sons, besides leaving his aged mother Rani Satyabhama Devi, widow of the late Raja Kali Narayan Roy.

The plaintiff appeared in Buckland Bund towards the end of December, 1920, or the beginning of January, 1921. Not until a few months later, however, was he openly recognised as the second Kumar of Bhowal, or was a claim put forward on his behalf to recover his share of the estate.

The plaintiff states that after he was recognised, the tenants began to pay him rents. On the 3rd June, 1921, however, the Collector of the district, J. H. Lindsay, I.C.S., published a notice declaring him to be an impostor and warning the tenants not to pay any rents to him.

On the 8th December, 1926, the plaintiff submitted a memorial to the Board of Revenue asking for the withdrawal of this notice, but this memorial was rejected by the Board on the 30th March, 1927. The plaintiff was also prevented by the local officers from going to Jaidebpur on the ground of likelihood of a breach of the public peace.

PARTIES TO THE SUIT

The present suit was instituted by the plaintiff on the 24th April, 1930 in the court of the subordinate judge of Dacca. The eldest Kumar Ramendra Narayan Roy had died without leaving any male issue in the year 1910 and was succeeded by his widow Sarajubala Devi, known as Bara Rani or eldest Rani. The youngest Kumar Rabindra Narayan Roy died in 1913, and as he also left no son, his estate devolved on his death on his widow Ananda Kumari Devi, who was called Chhota Rani or youngest Rani. In the year 1919 this lady took a son in adoption named Ram Narayan Roy, but by virtue of an ante-adoption agreement, she still retained an interest in a portion of her husband's estate. The plaintiff has joined all these persons as defendants in this suit, besides the Mejo Rani or second Rani Bibhabati Devi, who is defendant No 1.

At the date of the suit all the three shares of the estate were under the management of the Court of Wards. The defendants have been consequently represented in these proceedings by the Manager of the Court of Wards.

The widow of the eldest Kumar, Sarajubala Devi, who has been made the second defendant, has supported the plaintiff and has not filed any written statement in the suit. The suit has been contested mainly by the first defendant Bibhabati Devi. A joint written statement was filed on behalf of this defendant and of the adopted son Ram Narayan Roy, defendant No 3, by the Manager of the Court of Wards. Ananda Kumari Devi, widow of the youngest Kumar and the fourth defendant in the suit, filed a separate written statement on her own account.

The present appeal to this court has been filed by Bibhabati Devi, Ram Narayan Roy and Ananda Kumari Devi, all Wards of Court, represented by the Manager of the Court of Wards, the first defendant Bibhabati Devi also appealing in her individual capacity, and the respondents are the plaintiff and the defendant Sarajubala Devi.

DEFENCE CASE

The common defence of all the defendants other than Sarajubala Devi was a categorical denial of the plaintiff's claim. Their case was, first, that Kumar Ramendra Narayan Roy had in fact died at Darjeeling on the 8th May, 1909, and his body had been burnt to ashes, and secondly, as an inevitable corollary of this, that the plaintiff was an impostor.

QUESTIONS AT ISSUE

It seems to be obvious that from the plaintiff's point of view the main, if not the only, question he is called upon to establish is his identity with Ramendra Narayan Roy, the second Kumar of Bhawal, while the defendants on their part will have completely made out their case if they can prove the death or cremation of the second Kumar at Darjeeling. As will be seen later, the events at Darjeeling indeed fill a very large chapter in the story, and from the defendants' point of view, it is not only a very important chapter but one of crucial significance. Either side has naturally laid stress on its own part of the case, the plaintiff on what for the sake of brevity may be referred to as the question of identity, and the defendants on the question of death and cremation. This difference in the attitude of the parties was reflected in two different issues which were raised in the suit—one, as to whether the plaintiff was the second Kumar Ramendra Narayan Roy of

Bhowal (*Issue No 5*), and the other, as to whether the second Kumar Ramendra Narayan Roy was still alive (*Issue No 4*) The learned trial judge says that he allowed the last issue to stand in deference to the suggestion of the contesting defendants. If this issue is decided in favour of the defendants, that would of course mean an end of the plaintiff's case. On the other hand, it is equally certain that if the other issue is found in favour of the plaintiff, that should likewise be a complete answer to the defendants' case. If it be true that the second Kumar is dead, the plaintiff (or for the matter of that, any other living person) cannot be he, and conversely, if it be found that the plaintiff is the second Kumar of Bhowal, the Kumar cannot have been dead. To put the matter in another way, it follows almost with logical certainty that whichever side proves the affirmative of its case will thereby completely demolish the case of the opposite party. There is, however, this difference between the position of the plaintiff and that of the defendants: the defendants may on their part fail to prove death or cremation but may still win on the failure of the plaintiff to prove identity, but the plaintiff cannot succeed unless he proves identity, even if the defendants fail to prove death or cremation.

That this is the correct position does not to my mind admit of any dispute, and was fully appreciated by the learned judge in the court below (*See his observations at the bottom of page 7 and top of page 8 of Vol 18*) *

After setting out the two issues as follows —

(*Issue No 4*) "Is the second Kumar Ramejdra Narayan Roy alive?"

(*Issue No 5*) "Is the present plaintiff the second Kumar Ramendra Narayan Roy of Bhowal?"

the learned judge states—

"I allowed the issue No 4 to stand in deference to the suggestion of the contesting defendants that it may stand. The idea underlying the two issues is that the plaintiff must prove that the second Kumar is alive and that he is the second Kumar. If he can prove that he is the second Kumar, he is alive. If he cannot prove that he is the second Kumar, there will be an end of the case, whether the second Kumar be dead or alive, but death will be an answer to the claim. The plaintiff's case goes so near death and the transactions following the disputed death had, until 1921, been so consistently on the footing that the death was a fact that the onus of proving that the Kumar had not died would, practically speaking, be upon him, but supposing he proves that he is the same man, death is displaced." (*Vol 18, p 7, l 21—p 8, l 6*)

IDENTITY—THE MAIN QUESTION

Quite properly, I think, the learned judge stated that the question therefore was, whether the plaintiff was the second Kumar of Bhowal (*ibid*, p 8, ll 10), and he addressed himself to a consideration of the issue of identity as the primary issue in the suit.

As to whether his ultimate conclusion on the issue of identity is correct or not will have to be fully examined, but it is not to be supposed that because he decided this issue definitely in favour of the plaintiff, he declined

* I may explain that I have throughout referred to the 18 volumes comprising Part I of the Paper Book (containing the order-sheet, pleadings, petitions, depositions and judgment) by Arabic numerals, and to the 3 exhibit volumes in Part II by Roman numerals.

to go into the question of the alleged death and cremation of the second Kumar at Darjeeling. On the other hand, as will appear later, he has devoted a considerable part of his judgment to a full examination of this part of the case. As I shall endeavour to show, it is a complete misreading of this part of the judgment to say, as the appellants attempted to say, that in dealing with what may not inappropriately be called the Darjeeling chapter, the learned judge allowed himself to be swayed by the opinion he had already formed on the question of identity. The passages on which learned counsel for the appellants relied in support of this line of criticism show no more than this that the learned judge was merely attempting to relate the happenings at Darjeeling to the substantive case on the issue of identity. As already pointed out, the plaintiff's claim was based on identity, and to this the defendants' answer—and it would be a conclusive answer, if established,—was that the Kumar did die and his body was actually cremated at Darjeeling. In other words, death or/and cremation was relied upon by the defendants as completely destructive of the plaintiff's case. Obviously, therefore, it would be right for the court to consider and say how far the evidence regarding death and cremation and other relevant facts connected therewith alleged by the defendants was sufficient to repel the conclusion as to identity. I do not understand the learned judge as having said anywhere that he must reject the defendants' evidence regarding any of the Darjeeling events as untrue, merely because he had already come to a finding in the plaintiff's favour on the question of identity. On the other hand, as it strikes me, the learned judge subjected the Darjeeling evidence to an independent examination as if identity had not been established, and all that he did in stating his conclusion was to apply the test, whether or not that evidence was cogent or strong enough to displace identity, which is the same thing as to say, whether or not that evidence established the fact of death or cremation which would destroy identity. According to the learned trial judge, the defendants' evidence failed to satisfy such test. In other words, even if it be supposed that the learned judge's finding on the Darjeeling chapter did not amount to a positive acceptance of the story put forward by the plaintiff in this behalf, it cannot be denied on a fair reading of the judgment that he intended to hold and held that the defendants had wholly failed to prove their case that the second Kumar had actually died or that his body had been burnt to ashes.

DARJEELING CHAPTER—RESPECTIVE CASES

It may perhaps be helpful to state here in very brief outline the respective cases of the parties regarding what took place at Darjeeling.

It is an admitted fact that all the three Kumars were in the habit of paying periodical visits to Calcutta almost every year. The last time that the second Kumar returned to Jaidebpur from Calcutta was on or about the 7th February, 1909. The Kumar was then a young man of 25, and he set out for Darjeeling on the 18th April following, with a large retinue of officers and servants whose names will be found in the judgment at *pages 46 and 47 of Vol 18*. It will be seen that the party which accompanied him included among others the Kumar's wife Bibhabati Devi, then a young girl of about 19, and his wife's brother Satyendranath Banerjee, who was about 24 years of age at the time. It further included the family physician Dr Ashutosh Das Gupta, also a young man of about the same age, one Mukunda Guin, Secretary of the Kumar, one C J Cabral, an old servant, one Anthony Morel, an Indian Christian who had been in the service of the estate for about five years, and a young man Birendra Chandra Banerjee said to be a relation of the Kumar. The party put up at a house called "Step Aside",

which had admittedly been engaged a few days previously by Satyendranath Banerjee and Mukunda Guin who had expressly come up to Darjeeling for the purpose. A description and a rough plan showing the position of rooms in this house will be found at *pages 311 and 312 of Volume 18*, where the learned judge also gives a helpful sketch, though not drawn to scale, showing the topography of Darjeeling and broadly indicating the relative positions of many of the places referred to in the evidence. Here at Darjeeling, according to the plaintiff, he took ill on the night of the 5th May, 1909 or in the early hours of the 6th, and is supposed to have died on the 8th May following, which was a Saturday, at about dusk. His body, as already stated, was thereafter carried from "Step Aside" to the local burning ground or "*sasan*", a distance of about two or two and a half miles by tortuous hill tracks and about one hour's walk from "Step Aside" going downhill all the way. In going to the *sasan* from "Step Aside", there are two alternative routes up to a certain point one has been referred to in these proceedings as the Commercial Row route and the other as the Thorn Road route, but beyond the said point the route was the same. According to the plaintiff, the cremation party which left the house at about 9 p.m. the same evening followed the Commercial Row route. When the body reached the *sasan* it is said, a storm came on attended by heavy rain which was so violent that all the persons who had accompanied the body ran away from the place and took shelter in certain sheds near about, leaving the body where it was. The rain had apparently sufficient effect on the man who was supposed to be lying dead to make him utter certain sounds which were heard by a number of sannyasis who happened to be waiting in a sort of a cave in the hill-side near by. The sannyasis came up to the spot where the body lay, and observing signs of life in it, took it away. When after about an hour or so the cremation party returned, they found the body gone. It is the plaintiff's case that he had passed into a state of apparent death following the administration of poison, and that the evidence available all points to his having developed symptoms of arsenical poisoning.

The contesting defendants admit the visit of the second Kumar to Darjeeling and his stay at "Step Aside" as stated above. They also agree that he fell ill early in the morning of the 6th May, but state that he died, not at dusk as alleged by the plaintiff, but at about midnight of the 8th May, 1909. They stoutly deny that he had been the victim of poisoning or that he had developed any symptoms of arsenical or any other kind of poisoning. According to them the Kumar died of bilary colic. They deny that there was any funeral procession in the evening as alleged by the plaintiff, and assert on the contrary that the body was taken out for cremation the following morning and cremated with usual rites and ceremonies in the presence of a large body of persons. They say that the cremation took place not at the old *sasan* from which according to the plaintiff's story the body had disappeared the previous night, but at a new burning ground, about a furlong further down, which had recently come into existence and was provided with a shed or shelter. According to the defendants, the route followed by the funeral procession from "Step Aside" was along Thorn Road.

MORNING CREMATION ADMITTED

The plaintiff admits, though there is no mention of this fact in the plaint, that a cremation procession did leave "Step Aside" on the morning of the 9th May, and that a body, obviously purporting to be that of the Kumar, was carried in this procession for cremation and actually cremated. Taking it along with the substantive story of an evening procession following on the

supposed death of the Kumar early in the evening of the 8th May, this admission on the part of the plaintiff carries with it the implication that the body which was taken out on the morning of the 9th May was in fact *not* that of the Kumar. This involves saying that after the evening cremation failed under the circumstances alleged by the plaintiff, another body must have been procured in the course of the night, and that a faked procession was staged with this substituted body on purpose the next morning. In the memorial which the plaintiff presented to the Board of Revenue on the 8th December, 1926 (*Ex J*, Vol III, p 92, paragraph 4), the plaintiff had in fact made the following statement —

“That your humble memorialist is now in possession of conclusive proof that those who alleged his death, being afraid of a public scandal, burnt to ashes a dead body of a substituted person the next morning with full show of a ceremony ”

At the trial the plaintiff was unable to give any positive evidence to show that the body taken out in the morning was not actually that of the Kumar, but merely referred to a number of suspicious circumstances attending the morning cremation from which an inference was sought to be drawn to that effect

IMPROBABILITY OF SUBSTITUTED DEAD BODY

In support of their own case and in rebuttal of the case made by the plaintiff, the defendants have naturally placed considerable emphasis on the improbability, or as they put it, the utter “impossibility” of another dead body being procured in the course of the night, particularly by very young people who were strangers at Darjeeling, and of such a dead body being brought to “Step Aside” and successfully passed off as that of the Kumar without rousing the suspicions of the second Ranı or of the trusted officers and servants of the estate who were at the house. They point out that no allegations have been made by the plaintiff against the second Ranı as being in any conspiracy

There can be no doubt that the procuring and substitution of another body is necessarily implied in the plaintiff’s case, and it should certainly be a very important point to consider how far the plaintiff’s failure to substantiate such a fact by positive evidence would affect his case generally, if not, in particular, the substantive evidence he has given to prove death at dusk or an evening procession

HOW FAR IT AFFECTS PLAINTIFF’S CASE

It is enough to state at this stage that if on the evidence it is possible to hold that a funeral procession did leave “Step Aside” on the evening of the 8th May, 1909, and if at the same time it be also a fact that a similar procession started from the same place the next morning, as is the defendants’ case and as the plaintiff admits, it must inevitably follow that the body taken out in the morning could not be the same as that which had been taken out the previous evening, unless it be supposed that the body after it had gone out of the house in the evening was brought back to “Step Aside” in the course of the night, which, however, is the case of neither party. In other words, the plaintiff’s case of a substituted dead body need not fail merely because of his failure to prove this particular fact by positive evidence. It may equally follow as the only possible conclusion from the other facts indicated, which it will undoubtedly be for the plaintiff to establish to the satisfaction of the court. The first of such facts, as stated above, is the

evening procession, following on supposed death at dusk,—a story which itself carries no inherent improbability with it the question is, whether the story is rendered improbable, or the evidence given in support of it, is rendered unacceptable, merely because, coupled with the fact of a second procession in the morning, it involves the implication of a substituted dead body

DEATH AT DUSK

It is obvious that the plaintiff cannot possibly succeed, if he cannot prove the evening procession, for, if this goes, the procession which went out on the morning of the 9th May would be the only cremation procession, and it is admitted that the body which was taken out in this procession was reduced to ashes. Now, the evening procession cannot be a fact, unless the supposed death of the second Kumar had taken place earlier, that is to say, at about dusk on the 8th May. The precise hour at which this event occurred is not very material it would be enough to show that it happened in the early hours of the evening. Quite rightly, therefore, the learned judge held "death at dusk" to be a pivotal fact in the plaintiff's case (*Vol 18, p 353, ll 19-21*). As has been already pointed out, the defendants' definite allegation is that death took place at about midnight, and if on the evidence this is found to be a fact, it will inevitably wipe out the whole of the plaintiff's case. Not that, theoretically speaking, an attempted cremation of the second Kumar in the morning could not be attended with a similar sequel to that which is said to have followed the evening attempt alleged by the plaintiff, or could not have resulted in the Kumar's escape from cremation or in his rescue, but it is the plaintiff's positive case that all these happenings took place in the dark hours of the night and were in fact a direct consequence of a heavy burst of rain and storm upon the arrival of the cremation party at the *sasan*. The suggestion of the defendants is that the story of death at dusk and evening cremation was a deliberate invention on the part of the plaintiff or of his advisers to avoid the obvious improbability which would be involved in a story of such strange happenings as are said to have occurred at the cremation ground taking place in the broad light of day. The plaintiff, they say, would rather face the greater improbability of a substituted dead body than take such a patent risk.

It is quite natural that the appellants should comment very strongly on the fact that the plaintiff, though he admits that a body was taken to the cremation ground on the morning of the 9th May and cremated as the body of the second Kumar, has not produced a single witness on his side who says that the body was *not* that of the Kumar. But, apart from the fact that this may be taken as only showing that the plaintiff was not prepared to call evidence to prove what he knew he was not in a position to prove, the question still remains whether the plaintiff's failure in this respect may be supposed to help in any way to establish the defendants' positive case that this was the body of the second Kumar. The defendants have in fact adduced substantive evidence on the point if that evidence is accepted, it doubtless establishes their case and necessarily destroys that of the plaintiff, but if, on the other hand, that evidence is not found satisfactory or sufficient, can the defendants' case be still held to be proved, merely because there is no direct evidence on the side of the plaintiff to the contrary?

The respective cases of the parties regarding the Darjeeling events are wholly antagonistic to each other, and as is to be expected, the evidence adduced by both sides is mutually contradictory on almost every question of fact in connection therewith.

DEFENDANT'S CRITICISM OF TRIAL COURT'S JUDGMENT

Before proceeding to examine the evidence it will perhaps be useful to consider a little more fully the appellants' general criticism of the *ratio decidendi* of the trial court's judgment. The gravamen of such criticism is that the learned judge entirely failed to adopt the correct and logical method of approach to the real question which he was called upon to decide. The crucial question in the case, according to learned counsel for appellants Mr A N Chaudhuri, was as to whether the second Kumar of Bhowal had in fact died and his body had been cremated, and it was said that if a conclusion in the affirmative thereon was found impossible, or if a definite conclusion in the negative was reached, then only would the question of identity arise. The learned judge, it was argued, had reversed this natural order. He took up the question of identity first, and having held identity to have been established, he did not really trouble to come to independent findings on the questions relating to death and cremation. His findings, such as they were on these points, were attacked as being based really on an assumption of identity and not on the relevant evidence, which, it was pointed out, was not even fully set forth, much less examined and appraised. The judgment on the Darjeeling chapter, it was accordingly contended, was not a proper judgment at all and the so-called findings therein recorded were of no value whatever.

IDENTITY—A FACT CAPABLE OF LEGAL PROOF

Apart from the fact that the learned judge did not, as I hold, subordinate his findings regarding death and cremation to his decision on the question of identity, Mr Chaudhuri's criticism, to my mind, betrays a lack of appreciation of the correct position. Such criticism might perhaps possess the merit of plausibility, if it could be contended with any show of reason that identity was a matter which was not susceptible of proof in a court of law. But that is a proposition which even Mr Chaudhuri was not prepared to advance. Identity may be sometimes a very difficult matter to decide, but to say that identity is a fact which is not capable of legal proof would be to go in the teeth of numerous cases of mistaken identity with which the Law Reports abound. To mention only one notable instance, reference may be made to the well-known Tichborne case relied on by both sides in the course of their arguments, in which a definite verdict was actually reached as to the identity of the claimant with one Arthur Orton. It is worth while pointing out that in the present case itself the defendants definitely alleged and attempted to prove the plaintiff's identity with a Punjabi peasant named Mal Singh of Aujla, which shows that the defendants themselves do not believe that identity cannot be proved, and yet this would seem to be the only basis on which Mr Chaudhuri could possibly support his contentions. In a case where the identity of an individual is in dispute any party concerned to deny the identity may no doubt rightly require that the court should insist on strict proof before finding identity to be established, and one can understand an argument that the evidence falls short of legal proof. On the question of identity, it is not necessary to minimise the difficulties in the present case arising from its peculiar facts and circumstances, but the standard of proof which should satisfy the court is clearly laid down for us in the Indian Evidence Act. It cannot admit of any dispute that the identity which the plaintiff claims in this case with Ramendra Narayan Roy, the second Kumar of Bhowal, is a "fact" within the meaning of the word as

defined in s 3 of the said Act "Fact", according to this definition, means and includes—

"(1) any thing state of things, or relation of things, capable of being perceived by the senses,

"(2) any mental condition of which any person is conscious "

That the plaintiff is the person he claims to be is undoubtedly a "thing" "capable of being perceived by the senses", and there can be no doubt that it is "a fact in issue" in the suit. The question is, what are the conditions which must be satisfied in order that this may be held to be "proved" S 3 of the Indian Evidence Act lays down

"A fact is said to be *proved* when, after considering the matter before it, the court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists "

In order, therefore, to make a proper assessment of the findings of the learned trial judge on the question of identity, the test to apply would be to see if there were sufficient materials placed before the court by proper and legal means to have induced it either to believe in the existence of the fact of identity or to consider its existence so probable that a prudent man ought to act upon the supposition that it existed. As has been rightly observed, "the true question in trials of fact is not, whether it is *possible* that the testimony may be false, but whether there is sufficient *probability* of its truth, that is, whether the facts are shown by competent and satisfactory evidence" It might be pertinent also to add in this connection that, as the Privy Council laid down in *Ramalinga Pillay v Sadasiva Pillay*, (1864) 9 Moore's IA 506, when there is sufficient evidence of a fact, it is no objection to the proof of it that more evidence might have been adduced.

It follows that if in the present case the identity of the plaintiff could be held as "proved" within the meaning of the Indian Evidence Act, death and cremation of the second Kumar as alleged by the defendants would be automatically disproved, and Mr Chaudhuri had to concede that identity so proved would override the improbabilities of the plaintiff's case regarding Darjeeling. If it is Mr Chaudhuri's contention that the evidence of identity on the plaintiff's side was not sufficient or reliable, the plaintiff would undoubtedly fail on that ground alone, whether the defendants were able or not, on their part, to prove their case of death and cremation. On the assumption of a correct finding by the learned trial judge on the question of identity, Mr Chaudhuri's attack on the Darjeeling chapter of the judgment would thus appear to be wholly without point. If the plaintiff, on his part, is in fact unable to establish identity to the satisfaction of the court, this itself will relieve the defendants of the burden of having to prove death and cremation, and from this point of view, any criticism of the learned judge's findings on death and cremation, however interesting it might be as an exercise in forensic dialectics, would be so much wasted effort.

JUDGE'S ORDER OF TREATMENT JUSTIFIED

Logically speaking, therefore, Mr Chaudhuri's attack on the judgment must be directed against the merits of the finding on the question of identity, and not against the learned judge's mode of approach to the case. From one point of view it may be said that the order which the learned judge followed in taking up the question of identity first and then the question of death and cremation, was really in favour of the defendants rather than of

the plaintiff, for, while it laid on the plaintiff an initial burden, heavy enough in any case of disputed identity, but all the heavier in this case by reason of its extraordinary facts and circumstances, it rendered it all the easier by that very fact for the defendants to demolish the plaintiff's claim. If Mr Chaudhuri is right, it should be more difficult for the plaintiff to prove identity than for the defendants to prove death or cremation. Why, then, should he complain if the heavier burden is thrown on his adversary? It is hardly necessary to repeat that if the plaintiff fails on identity, he fails altogether, even if death or cremation is not proved.

It seems to me, therefore, that the only question that matters is not whether the learned judge has based his findings as regards death and cremation ultimately on identity, but whether his finding on the question of identity itself is sound and proper. As a general proposition it can be safely asserted, to put the matter in a logical form, that identity, if established, would negative death and cremation, just as death and cremation, if established, would negative identity, and it ought not to make any difference in strict theory, which of these questions is taken up first for consideration, so long as the court insists on and applies a correct standard of proof in coming to its findings. The effect of Mr Chaudhuri's own contention is that identity on the one hand and death and cremation on the other are two distinct chapters and ought to be kept apart. His complaint against the learned trial judge in fact is that in dealing with the evidence of death and cremation, the learned judge allowed himself to be influenced by the opinion he had already been led to form on the question of identity. By parity of reason it might be argued, on the other hand, that if the learned judge had reversed the order and taken up the question of death and cremation first, as Mr Chaudhuri says he should have done, it would have been equally obnoxious for him to have allowed his findings on this question to influence his judgment on the issue of identity.

The respondent before us through his learned counsel Mr B C Chatterjee maintained that Mr Chaudhuri had in fact laid far greater stress on the value of identity as the deciding factor in the case than the learned judge had permitted himself to do. The criticism is not without justification, as an examination of the scheme of the judgment will show. Strictly speaking, as already pointed out, it was quite open to the learned judge, once he was satisfied on the question of identity, to make this the touchstone of the case as to death and cremation and to reject the defendants' evidence on this head as necessarily false. But that is far from what the learned judge actually did. On the other hand, with characteristic fairness, he entered into a minute examination of the whole of the case touching death and cremation, subjecting the evidence to a careful and detailed analysis.

At the hearing of the appeal before us, learned counsel on either side preferred to deal with the Darjeeling chapter first, before going into the question of identity, and there can be no objection to following the same order of treatment in the present judgment.

SOME BROAD FACTS

Still there are certain outstanding facts and features connected with the defendants' case generally which may be noticed at the outset.

DEFENCE STORY—PLAINTIFF, A "MEDICINE-MAN"

One important fact to be observed is that though the defendants say that the plaintiff was an impostor, they admit that he was an impostor who came

upon the scene with no ulterior designs of his own to start with. The plaintiff came to Dacca as an ordinary sadhu and took up his position at a place which was the usual haunt of sadhus in that town. Here he acted and behaved throughout as a person who was not only bereft of worldly belongings, but of worldly longings as well. According to the defendants, the plaintiff was in fact a mere "medicine-man" who was distributing "*elachi*" or cardamoms to passers-by and offering recipes for the cure of all sorts of ailments, and it was as a "medicine-man" that he was taken from place to place by credulous persons who believed in his supernatural powers. He was thus first taken to Kasimpur, a place not far away from Jaidebpur, on or about the 5th April, 1921 (23rd Chaitra, 1327 B S) to perform, it is said, for one Sarada Prosad Roy Chaudhuri, a well-known local zemindar, a ceremony called "*puñeshhi jagna*", which is a well-known religious ceremony amongst Hindus for the purpose of procuring a son. From there he was sent down to Jaidebpur to Rai Sahib Jogendra Nath Banerjee, a Court of Wards officer attached to the Bhowal Raj estate, at the Rajbari, and while he was staying here, he admittedly paid a visit to the house of Jyotirmoyee Devi at Chakkar, a quarter of Jaidebpur not far from the Rajbari, which the defendants say he did for the purpose of curing some eye-trouble of a daughter of the family. There is some dispute between the parties as to the date of this visit to Jaidebpur: the plaintiff says that he arrived here on the 12th April, 1921, or the 30th Chaitra, 1327 B S, whereas the defendants assert, for a purpose which will be seen later, that he came on the following day, which was the *Chait-Sankranti* or the last day of the Bengali month of Chait or Chaitra and in fact the last day of the Bengali year. It is common ground, however, that this *Chait-Sankranti* visit was of short duration and that plaintiff left Jaidebpur on the third day of his arrival.

NOT SUSPECTED AS SECOND KUMAR

It is next to be observed that according to the defendants, while the plaintiff was at Buckland Bund or at Kasimpur, no suspicion crossed the mind of any one who saw him there that he might be the second Kumar of Bhowal. No such suspicion, on the defendants' case, could possibly arise, when death of the second Kumar at Darjeeling in 1909 was an accepted certainty, and an only rumour that he might be still alive, which the defendants admit arose in 1917, is said to have perished almost as soon as it had originated, on receipt by Rani Satyabhama Devi of a reply from the Maharajahdhiraj Bahadur of Burdwan to a letter she had written to him on the 3rd September of that year referring to such a rumour (*Ex Z(33), Vol II, p 175*). Moreover, the defendants say that the plaintiff looked so "*utterly dissimilar*" that it was not possible for any one to mistake him for the second Kumar. The defendants, it will be seen, afterwards came to realise the implications of this theory of "*utter dissimilarity*", and tried their best to whittle it down.

JYOTIRMOYEE DEVI—DE FACTO PLAINTIFF

Another important fact which it is necessary to point out is that, according to the defendants, Jyotirmoyee Devi is the *de facto* plaintiff in the case. It is said that it was she who actually manoeuvred the plaintiff into the position which he was ultimately forced to accept. It is definitely *not* the defendants' case that Jyotirmoyee Devi had, by a pre-concerted plan, contrived to get the plaintiff at Buckland Bund and left him there to watch the reaction of the public mind to any insidious propaganda engineered by her in the meantime to the effect that the plaintiff was her long-lost brother. The defendants'

suggestion, on the other hand, is that it was either at the Chait-Sankranti visit or shortly thereafter that this lady, struck by some superficial physical resemblance of the plaintiff with the second Kumar, first conceived the idea of putting him forward. A few days later she tried to arrange another interview with the plaintiff at Dacca at the house of her youngest sister Tarinmoyee Devi, but as Tarinmoyee's husband would not allow it, she finally managed to have the plaintiff taken to the house of one Saibalini Devi, a second cousin of the Kumars, who stayed at Dacca and is an important witness examined on commission on behalf of the defendants (*Vol 3, pp 436-472*). Finally, on the 30th April, 1921, Jyotirmoyee Devi had the plaintiff brought down for the second time to her own house at Jaidebpur, and it is said that this was done with the definite object of trying, if she could, to get the plaintiff to play the role which she had already made up her mind he should play in her interest. The plaintiff was naturally hesitant at first and his diffidence had to be overcome, and for this purpose, it is asserted, this wily lady staged an elaborate make-believe in the shape of a public demonstration at her house on the 4th May, 1921, at which hundreds of people purported to have openly recognised and acclaimed the plaintiff as the second Kumar of Bhowal. This incident is a landmark in the history of the case and has been referred to in these proceedings as "*Atma Parichaya*" (literally, self-revelation) or *Declaration of Identity* by the plaintiff.

QUESTION OF MOTIVE

Now, supposing the defendants are right in the case they have made as stated above, they are inevitably faced with the question as to why or how Jyotirmoyee Devi should or could all on a sudden have taken it into her head to concoct such a huge scheme of fraud, and then worked it out with such signal success. In the first place, had she any motive? Not that the defendants are called upon to prove the existence of any definite motive, but in judging the probabilities of human conduct, particularly of such strange conduct as the defendants ascribe to this lady,—a *pardanashin* Hindu widow whose past record does not certainly justify even a remote suspicion of anything like a Machiavelian turn of mind,—the consideration of motives cannot be altogether eliminated. Assuming the second Kumar had died, neither he nor any of his brothers had left any male issue, and if there was no adoption by any of the widows, the sisters' sons would be the nearest reversioners. Jyotirmoyee Devi had a son living at the time, named Jalad Mukherjee *alias* Buddhu. She would certainly not be advancing the prospects of her son's succession to a share in the estate (it may be, along with other sisters' sons of the Kumars) by bringing back to life, so to say, a deceased brother. In point of fact, the youngest Rani Ananda Kumari Devi had adopted a son, Ram Narayan Roy, in May 1919, a fact which was by itself enough to cut off all chances of succession for Jyotirmoyee Devi's own son or the sons of any other sister. How could Jyotirmoyee Devi in this state of things profit at all by contriving the reappearance of the second Kumar in 1921? This might affect the reversionary interest of the adopted son to the second Kumar's share, but would not certainly secure any benefit to her or to her son. The defendants have not even hinted at the existence of any pact or understanding, secret or otherwise, between the plaintiff and Jyotirmoyee Devi stipulating for division of the estate between themselves as the reward of ultimate success. The adoption of Ram Narayan Roy came to be challenged afterwards by a suit instituted by the son of the youngest sister Tarinmoyee Devi, but this was in 1925, four years after Jyotirmoyee Devi is supposed to have set to work on her fraudulent venture. Was she, then, minded, through malice

or malevolence, to inflict harm on the second Rani by foisting a husband upon her, or to deal an indirect blow at the third Rani by imperilling her adopted son's reversion? The evidence is, and it is not disputed by the defendants, that till the arrival of the plaintiff, Jyotirmoyee Devi was on excellent terms with either Rani. I am not at all surprised that learned counsel for the defendants had no answer to give to the pertinent comments made by the learned judge in this connection at *p* 59 or at *pp* 91-92 of the judgment (*Vol* 18)

According to the defendants' case, it must be taken that Jyotirmoyee Devi's action in "propounding" the plaintiff was a fortuitous consequence of her *accidental* discovery of the plaintiff. They do not say or suggest that prior to the arrival of the plaintiff at Dacca this lady had been wistfully looking out for a possible "double" of her deceased brother Ramendra Narayan, or that she had any reasons to consider the reappearance of her brother as something within the range of probability. On the other hand, it is the defendants' case, and they have stoutly adhered to this case right to the end, that the death of the second Kumar was an accepted fact, that Jyotirmoyee Devi must have believed and did believe in his death, and that she must have known and did know that this was also the belief of everyone concerned. The defendants in fact scout the plaintiff's story as to any rumours having been afloat anywhere or at any time since the date of supposed death of the second Kumar, to the effect that his body had not been cremated or that he was still alive, except that they admit only one short-lived rumour, that of 1917, to which reference has been already made. If, then, as the defendants maintain, there was not only no background already in existence for the possible acceptance of such a story as Jyotirmoyee Devi is supposed to have started, but the facts were all positively against it, is it likely or probable that Jyotirmoyee Devi, or for the matter of that any person, however shrewd or intriguing, should or could invent such a tale and then run away with it? If, as is their case, the second Kumar had died at Darjeeling and his body had been cremated in due course, and this was known to Jyotirmoyee Devi, she must have realised that before she could think of successfully passing off a fictitious person as her second brother, she would have to overcome this fact of his death and cremation. The records will, however, have to be searched in vain for any evidence on defendants' side that within the short space of a few days that she had for hatching and perfecting her wicked plot, there was any attempt by her or on her behalf to procure materials which might help to demolish this initial obstacle of fact.

It is necessary now to advert briefly to certain other facts before coming to a consideration of the evidence on the Darjeeling part of the case.

"ATMA PARICHAYA"

As has been seen, the "*Atma Parichaya*" or Declaration of Identity by the plaintiff took place at the house of Jyotirmoyee Devi on the 4th May, 1921. A graphic account of the happenings of this day, as also of the three days preceding this event, is given by her (*Vol* 8, *pp* 301 *et seq*), and there is practically no cross-examination of this witness on the point. Her story is in fact corroborated in material particulars by other witnesses on behalf of the plaintiff. It is definitely the plaintiff's case that Rai Sahib Jogendra Nath Banerjee who had entered the service of the Bhowal Raj as Private Secretary of the Kumars in Chaitra, 1311 B S (that is, about April, 1905), and had known the second Kumar intimately, was not only present at the "*Atma Parichaya*" (*ibid*, *p* 303, *l* 2), but had been coming to Jyotirmoyee

Devi's house every day that the plaintiff was there (*ibid*, p 362, l 7) This is denied by the defendants who maintain that neither Rai Sahib Jogendra Nath Banerjee, nor the Assistant Manager of the estate Mohini Mohan Chakravarty or any other witness on their behalf was present at Jyotirmoyee Devi's house at any time before or during the "*Atma Parichaya*" The defendants have not in fact chosen to call a single person who was present on the occasion as a witness to contradict the account given on the plaintiff's side (*Vol 18, p 93 bottom*) All the same, they have thought it fit to challenge the plaintiff's case regarding this event, pointing to certain alleged discrepancies in the evidence of some of the plaintiff's witnesses who seek to corroborate the account given by Jyotirmoyee Devi The matter need not be examined fully at this stage, but it is enough to refer here to certain contemporaneous documents which speak for themselves

NEEDHAM'S REPORT OF 5TH MAY, 1921

Apparently the incident which took place on the 4th May, 1921 produced a tremendous local commotion In point of fact it led to a confidential report being made the following morning by F W Needham, the Chief Manager of the Bhowal Court of Wards Estate, to the Collector of the District, J H Lindsay, ICS A copy of this report was sent by Needham the same day to Sarajubala Devi, widow of the eldest Kumar, at Calcutta, and this has been produced by the plaintiff and marked as an exhibit on his behalf (*Ex 59, Vol II, p 212*) The plaintiff relies on this document strongly as valuable evidence of the matters dealt with therein, which refer not merely to the incident of the 4th May, 1921, but to a wide-spread impression which had been already created in the public mind since the plaintiff's arrival at the house of Jyotirmoyee Devi a week ago that he was the second Kumar The report also mentions the plaintiff's prior visit to the house of Sarada Prosad Roy Chaudhuri at Kasimpur, his subsequent halt at Jaidebpur, and his visit to the house of Jyotirmoyee Devi on this occasion, which has been already referred to as the Chait-Sankranti visit According to the defendants, this report had been drafted for Needham by Rai Sahib Jogendra Nath Banerjee and Mohini Mohan Chakravarty, and was based mainly on information which had been supplied to these two gentlemen by the inmates of Jyotirmoyee Devi's house

FURTHER REPORT BY ASSISTANT MANAGER

On the following day, namely, the 6th May, 1921, there was a further report concerning the sadhu, submitted by the Assistant Manager Mohini Mohan Chakravarty, to the Chief Manager Needham, which is an exhibit on behalf of the defendants (*Ex 2(203), Vol II, p 215*)

DR ASHUTOSH DAS GUPTA'S LETTER OF MAY 5, 1921

There is another interesting contemporaneous document of this period put on record by the plaintiff which may be referred to in this connection (*Ex 398, Vol II, p 214*) It is a post-card dated the 5th May, 1921, in Bengali from Dr Ashutosh Das Gupta, the family physician of the second Kumar, who had accompanied him to Darjeeling in 1909, and who is a very important witness on behalf of the defendants (*D W 365, Vol 16, pp 240-246*), written from Jaidebpur, to Sailendra Nath Motilal, brother of the first Rani, who was then in Calcutta The writer states that a very wonderful incident had happened at Bhowal, the like of which was not to be found even in

fiction. A sadhu had arrived here at the house of Buddhu Babu (son of Jyotirmoyee Devi), and had given out that he was the second Kumar Ramendra Narayan Roy. Five or six thousand people were coming to see him every day and some of them were paying him *nazar* (present). Every one was firmly convinced that he was the Kumar himself. The affair had caused a great stir. The writer adds, "As I came and said that it was false, a hundred thousand people of Bhowal have been blaming me", and concludes that he was passing his days in terrible suspense.

It may be stated in passing that there is some dispute between the parties as to the precise meaning of the words within inverted commas above whether they refer to Dr Das Gupta having falsely denied the identity of the plaintiff as the second Kumar, or to a false report which he is supposed to have made after he had come from Darjeeling (that is, in 1909). On the latter interpretation, which the defendants were inclined to adopt in this court, Dr Das Gupta must have made a report concerning the death of the Kumar which now turned out to be false on his reappearance in the person of the sadhu.

Be that as it may, there is one important point to observe about this letter (*Ex 398*) as well as about Needham's report of the 5th May (*Ex 59*) and the report of Mohini Mohan Chakravarty of the 6th May, 1921 (*Ex Z(203)*), namely, that in none of these documents is there any mention of any story having been given out by or on behalf of the sadhu at or about this time, as to the circumstances in which the second Kumar is supposed to have survived an attempted cremation at Darjeeling in the year 1909. In Mohini Mohan Chakravarty's report it is stated, on the other hand, that the estate officials had tried their best to get from the sadhu definite information regarding "past events in the life of the second Kumar", but were unable to obtain any particulars, as the sadhu declined to answer their questions. The significance of this point will be apparent later on.

PUBLIC RECOGNITION OF PLAINTIFF AS KUMAR

From after the 4th May, 1921, it is not disputed that the plaintiff was attracting large crowds of people who were daily coming to see him at Jyotirmoyee Devi's house, and the plaintiff states that he was also receiving rents and *nazar* from the tenants of the Bhowal estate from this date onwards on the footing that he was the second Kumar. On the 15th May following there was a largely attended meeting at Jaidebpur on a *chata* or open piece of land in front of the Rajbari at which the plaintiff is said to have been publicly acclaimed as the second Kumar, and copies of the resolutions passed at this meeting were duly forwarded to the authorities.

ATTITUDE OF COURT OF WARDS

It appears that while the plaintiff was thus daily gaining recognition and support from the tenantry of the estate as well as from the relations and members of the Kumar's family, the local officials of the Court of Wards assumed a definitely hostile attitude towards him, and according to the plaintiff, it may be added, this dated from the 6th May, 1921. The action which they took, the enquiries which they set on foot, and the various proceedings which they held or caused to be held to counter the plaintiff's claim, form an important chapter in the case and will be adverted to presently.

In the meantime, about three weeks after the public meeting of the 15th May, 1921, another meeting was held of the tenants and taluqdars of the

estate at which an Association was formed called "*The Bhowal Taluqdar and Proja Samiti*" at Jaidebpur, with a view to "establish the Kumar in his legal position by legal means and to maintain him", as is deposed to by P W 228, Digendra Narayan Ghose (*Vol 5, p 460, l 40—p 461, l 1*), who was elected President of the Samiti and admittedly came to be one of the strongest supporters of the plaintiff (*See in this connection Ex 21, Vol II, p 275*). The Samiti made arrangements to collect subscriptions, and a sum of Rs 10,000 to Rs 12,000 is said to have been raised up to the month of Kartik 1329 B S (October 1922), when the Samiti ceased to function without being formally dissolved (*Vol 5, pp 460-461*).

PROPAGANDA

The defendants say that this was part of an intensive propaganda which was carried on on behalf of the plaintiff, in course of which a large number of pamphlets in prose or verse were published, which had an extensive circulation and some of which were said to contain scurrilous accusations against Satyendranath Banerjee and Dr Ashutosh Das Gupta, if not against Bibhabati Devi herself. It must not be supposed that there were no counter-pamphlets as well, supporting the defendants and directed against the plaintiff, nor, if we are to believe D W 92, Phani Bhusan Banerjee (*Vol 14, p 138, ll 14-18*), that there was no "counter-meeting" on behalf of the defendants to meet the propaganda of the Bhowal Taluqdar and Proja Samiti (*see also in this connection Ex Z(225), Vol II, p 352*).

It is necessary to refer particularly to one Bengali pamphlet on the plaintiff's side, styled "*Fakir beshe praner Raja*" ("The sovereign of our heart in the garb of an ascetic"), in which an imputation was made against Dr Ashutosh Das Gupta to the effect that he had poisoned the Kumar at Darjeeling. This gave rise to a criminal proceeding on a charge of defamation under sec 500 of the Indian Penal Code instituted by the doctor against the writer and the printer, Purna Chandra Ghose and Satish Chandra Roy respectively, the former being a son of Digendra Narayan Ghose, President of the Bhowal Taluqdar and Proja Samiti aforesaid. This prosecution, which was started on the 9th September, 1921 and has been referred to in the present proceedings as the "Defamation Case", eventually ended in the conviction of the accused, after it had been dealt with by two Deputy Magistrates,—first by Mr Sarada Prosonno Ghose, and then by Mr Birendra Mohan Ghose who acquitted them on the 31st May 1923, but whose order of acquittal was set aside on an appeal to the High Court by the Local Government (*See the case reported in 28 C W N 579*). The importance of this case lies in the fact that some of the persons who then gave evidence were afterwards witnesses in the present suit, and their present evidence has accordingly to be considered in relation to their previous depositions. Important among such witnesses are Dr Ashutosh Das Gupta (*D W 365, Vol 16, pp 240-346*) and Birendra Chandra Banerjee (*D W 290, Vol 15, pp 314-377*). The learned judge finds, and this finding has not been seriously challenged by either side, that Dr Ashutosh Das Gupta was the nominal complainant in the case, but the prosecution was really conducted by the Government Pleader of Dacca, Rai Bahadur Sasanka Coomar Ghose, on behalf of the Bhowal Estate, while the accused were assisted by the plaintiff (*Vol 18, p 99, ll 7-13, and p 116, ll 14-17*).

Although many of these pamphlets have been put in evidence on behalf of the plaintiff, learned counsel for the defendants has failed to point to any evidence on the record to establish the plaintiff's connection with them, and

in my opinion, it would be wrong to accept or act on any statements contained in such pamphlets as if they were admissions on the part of the plaintiff, or contained the plaintiff's version on any part of his case. I entirely agree, if I may say so, in the views expressed by the learned judge on the point (*Vol 18, p 113, ll 35-41*)

Reference may now be briefly made to the course of events showing the immediate reactions in the defendants' camp to the plaintiff's declaration of identity, and the account may well begin with Satyendranath Banerjee, brother of Bibhabati Devi and now a Rai Bahadur. He was undoubtedly a person most vitally interested in denying the plaintiff's claim, and according to the plaintiff, did in fact engineer the whole of the opposition to him.

Bibhabati Devi was not at Jaidebpur at this time. She had in fact left Jaidebpur in the year 1909, shortly after her return from Darjeeling, and came to live in Calcutta with her brother Satyendranath Banerjee. In May 1921 she was staying with him at a house at No 19, Lansdowne Road, a property worth over rupees two lakhs, which she admits had been purchased by her brother for himself entirely with her money (*Vol 12, pp 242 and 243. see also judgment, Vol 18, p 60, ll 15-19*)

According to Satyendranath Banerjee, who is D W 380 (*Vol 16, pp 423-545*), it was in the first week of May, 1921, that he came to hear of the plaintiff's arrival at Jaidebpur. He is not quite sure about the source of his information: it might be either Rai Sahib Jogendranath Banerjee or the Assistant Manager Mohini Mohan Chakravarty or the Chief Manager Needham (*ibid, p 489, ll 29-31*). But it is in evidence that a copy of Needham's report of the 5th May, 1921 (*E v 59, Vol II, p 212*) had been sent at the time to Bibhabati Devi as well as to each of the other two Ranis.

CONDUCT OF SATYENDRANATH BANERJEE

After receiving this report, what was the first step Satyendra took about it? He does not remember it at this distance of time, but in all probability he and his sister "talked the matter over". His sister was "astonished", but not "upset", and judging from his evidence, he too felt no more than a shock of mild surprise (*Vol 16, p 490, ll 10-17*). Both of them of course knew it for a fact that the second Kumar had died, and it so happened that by an extraordinary stroke of luck and foresight Satyendra was still in possession of documentary evidence of death, though only in copies. The documents were certain certificates of death and cremation of the second Kumar which had to be obtained after his death or supposed death, for the purpose of drawing out money on an insurance policy on the life of the Kumar, and copies of which Satyendra had been carefully preserving ever since.

Evidently Satyendra did not think it necessary or worth while to proceed to Jaidebpur to silence the agitation there, much less to make any enquiries regarding the supposed Kumar who was the centre of such agitation. He does not think he even put himself in communication with Lindsay, Collector of Dacca, except probably to send him copies of the Insurance affidavits (*ibid, p 489, ll 27-28*). What he did was simply to see two officials at the Secretariat in Calcutta—Lees and Lethbridge, the then Member and Secretary of the Board of Revenue respectively, the Board of Revenue being primarily under the statute (*Bengal Act IX of 1879*) the "Court of Wards", and having power to delegate any of its powers in this behalf to a Commissioner or a Collector or to any other person who is thereupon constituted as the Court of Wards in respect of such powers (*see 3*)

In the meantime, on the 7th May, 1921, there appeared in the "Englishman" newspaper of Calcutta a report about the Jaidebpur sadhu sent by the Associated Press from Dacca under the heading "Dacca Sensation". At the advice of Lees, Satyendra says (*Vol 16, p 490, ll 21-24*) he sent a contradiction to this report which was published in the issue of the "Englishman" of the 9th May (*Ex 409, Vol II, p 217*), and it may be pointed out that as the 8th May was a Sunday, it is very likely that Satyendra had seen Lees on the 7th.

In sending this contradiction Satyendra states he was anxious to "convince" the public that the second Kumar had died, and he apparently thought it was quite enough for the purpose to state that the Kumar had been attended in his last illness by Lt-Col Calvert, the then Civil Surgeon of Darjeeling, and that he himself (Satyendra) was "personally present" at the time of his death, without mentioning the further fact that Lt Col Calvert was also then present, though he admits he had this fact in mind at the time he was writing, and it came to be a vital part of his case later on (*Vol 16, p 490, ll 26-29*).

Satyendra is not in a position to contradict that he saw Lethbridge more than once, and might have seen him in fact before his interview with Lees, but he leaves us in no doubt as to the object of his visits. He remembers he went to ask Lethbridge to take steps to "safeguard the evidence of the Kumar's death" (*ibid, p 490, ll 31-33*), and wanted him in fact to see the originals of the insurance papers of which he left copies with him (*ibid, p 445, ll 26-27*). It appears that at his suggestion Lethbridge did write to the Insurance Company on the 10th May, 1921 calling for these papers. Acting on instructions from their Head Office in Glasgow, the Calcutta office of the Company sent to him on the 14th July following their file of papers containing the evidence of the Kumar's death and attached correspondence along with the original medical report on the Kumar's life (*Ex 450, Vol I, p 190*). Lethbridge, however, returned the documents to the Company the next day, as he did not consider it proper for the Court of Wards to take charge of these papers or that they should be handed over to either party to the dispute, but thought that if required in evidence, it would be more proper, if they were produced from the custody of the Company (*see Ex 448, Vol I, p 193*).

It is worth while to point out in passing that though the papers sent by the Insurance Company to the Board of Revenue included the medical report, and the Board of Revenue officials had an opportunity of inspecting the document before it was returned by them, the defendants made no attempt to produce it at the trial, and it was left to the plaintiff to call for it and have it produced by the Company at a late stage, namely, on the 15th December, 1934. The report which had been made in the year 1905 showed a certain identifying mark as having existed on the body of the second Kumar, and this tallied with a mark on the plaintiff which a large number of his witnesses had already spoken to long before the document came to be produced, but which the defendants had been strenuously denying all along until after the arrival of the report they could do so no longer (*Vol 18, pp 232-233*)

Satyendra states that on receipt of Needham's report he summoned no lawyer to counsel (*Vol 16, p 490, l 17*), but a lawyer did happen to come to him shortly after from Dacca in the person of the Government Pleader, Rai Bahadur Sasanka Coomar Ghose. The exact date of his arrival, or whether he came because he had been sent down by Lindsay to see Satyendra, is not clear, but it is not disputed that he came with "a letter in his pocket from the Collector" (*ibid, p 489, l 17*), and that he met Satyendra in Calcutta,

if he did not actually put up at his house. This "letter from the Collector" appears to be a report which Lindsay had drawn up on the 10th May, 1921, for the Board of Revenue, on the contents of which Lindsay was cross-examined on behalf of the plaintiff when he was giving his evidence on commission in London in September, 1931 (*Vol 2, pp 174-176*). For some unaccountable reason this report, though called for by the plaintiff, was never produced by the defendants in the trial court. A copy of it was, however, put in in this court by learned counsel for the defendants at the request of the plaintiff and was allowed to be marked by consent as *Exhibit 476*.

VISIT TO DARJEELING

Satyendra's evidence is that Rai Bahadur Sasanka Coomar Ghose was on his way to Darjeeling, having been asked by Lindsay to go there, and that he was going there "with some proposals to the Member of the Board of Revenue and to get his orders" (*Vol 16, p 489, ll 19-20*). The Rai Bahadur actually left on a date before the 15th May, presumably after having obtained in Calcutta on the 13th May the opinion of the Standing Counsel Mr (afterwards Sir) B L Mitter on the legal position of the sadhu (*Ex Z (357), Vol II, p 218*). Satyendra says that at the suggestion of the Rai Bahadur he accompanied him on this journey to Darjeeling, and he also took along with him a "barrister friend" of his—"out of love and friendship", as he puts it, though it afterwards turned out "quite accidentally" that this barrister friend was a brother-in-law of the particular Deputy Magistrate who, as will be stated presently, happened to be employed to take down statements of witnesses at Darjeeling (*Vol 16, p 491*). His visit to Darjeeling on this occasion, if we are to believe Satyendra, lasted for three or four days, and all that he did there was to see Lees and tell him in the presence of the Rai Bahadur "all that could be said to show that the plaintiff's claim was false and that he was an impostor" (*ibid, p 491, ll 34-36*). It is his statement that Lees and the Rai Bahadur "did not discuss the steps to be taken against the plaintiff".

RECORDING OF STATEMENTS

It still remains a fact that while these two gentlemen with the "barrister friend" were staying at Darjeeling,—and it may be stated that they were all putting up at the same hotel,—there commenced the recording of statements of sundry witnesses by a Deputy Magistrate of the name of N K Roy concerning the alleged death and cremation of the second Kumar. As to what led to this proceeding, or to the selection of a Deputy Magistrate or of this particular Deputy Magistrate for the purpose, is not at all clear from the evidence, but it is obvious that by no stretch of imagination could it be regarded as a proceeding in the course of a judicial enquiry or any enquiry sanctioned by law, though the employment of a Deputy Magistrate and the form and manner in which the statements were recorded might easily give it the appearance of such. Satyendra was very anxious to maintain that he himself took no interest whatever in the matter, and this was quite in keeping with his general attitude that the conduct of this case was more an "affair" of the Board of Revenue than of himself (*see, for instance, Vol 16, p 455 top, p 456, ll 23-25 and p 492, ll 19-23*). He was asked if he had any idea how these men who were examined at Darjeeling came to be secured, and all that he said was that he "gave some names to Mr Lees" (*ibid, p 491, ll 16-18*), just as he afterwards gave the names of several witnesses to the

Board of Revenue for the purposes of the present trial (*ibid*, p 460, l 29) Satyendra assured the court that before he left for Darjeeling there was no idea of examining witnesses at Darjeeling or anywhere (*ibid*, p 491, ll 21-22), and he did not even know that the Rai Bahadur brought down the statements of these witnesses from Darjeeling (*ibid*, ll 11-13) He, of course, could not deny that he knew that statements were being recorded at Darjeeling, though he had no idea of what they were (*ibid*, p 488 bottom—p 489 top)

GENESIS OF DARJEELING ENQUIRY

It is not necessary for the present to pursue further the course of action taken by Satyendra following on the declaration of identity by the plaintiff, but it is a very material question in this case as to whether the enquiry which was thus commenced at Darjeeling in the way of getting statements from witnesses was initiated by Lindsay or not It is not denied on behalf of the plaintiff that the enquiry was carried on in its subsequent stages by Lindsay and the Board of Revenue The learned judge finds (*Vol 18*, p 316, ll 36-37) that "this enquiry that began was not, and has not been proved to have been, at the instance of the Collector, though later it went on at his instance", and I may state at once that the defendants have not been able to show anything to negative this conclusion

On Satyendra's own showing, Lindsay had not, and could not have, suggested such an enquiry, and there is no evidence that it was directed by Lees at Darjeeling, or that the services of N K Roy were requisitioned at his instance The defendants rely in this connection on the evidence of Lindsay himself, and refer particularly to the answer he gave to interrogatory No 16, which was in these terms —

"16 Do you know if statements of witnesses were recorded about the death and cremation of the Kumar Ramendra Narayan Roy of Bhowal when you were Collector of Dacca? Why were they recorded and under whose orders? How was a list of persons to be examined prepared?"' (*Vol 2*, p 137)

Lindsay's answer was that he had arranged as Collector for statements to be recorded of people who might have witnessed the cremation of the second Kumar in Darjeeling (*ibid*, p 141, ll 1-3), and so far as he recollected, he had asked the Deputy Commissioner in Darjeeling to make a list of all the Bengalis who were in Darjeeling at that time in 1909, and statements were taken of people on that list as far as possible As such people, he said, were widely scattered, he had sent a questionnaire asking the people on the list to answer certain questions about the cremation and the answers came in from different parts of India (*ibid*, p 141, ll 9-14)

Obviously, however, Lindsay was not referring here to the first batch of statements which commenced to be recorded at Darjeeling during the visit of Satyendranath Banerjee and Rai Bahadur Sasanka Coomar Ghose in the middle of May 1921, but to a much later stage when it is admitted that he did send out such a questionnaire, sometimes direct to the witnesses concerned (as, for instance, to Dr Pran Krishna Acharyya, *Ex Z(335)*, *Vol II*, p 258), but more often through the Secretary to the Board of Revenue, this last named official actually calling for or arranging to obtain the statements (*see, for instance, Ex 443, Vol II*, p 238, *Ex 439, ibid*, p 241, *Ex 438, ibid*, p 243, *Ex 445, ibid*, p 245, *Ex 447, ibid*, p 254, *Ex 441, ibid*, p 262, and *Ex 430, ibid*, p 264) With reference to his answer to the above interrogatory, Lindsay was asked in cross-examination if he could state when he

had arranged for these statements to be recorded, and he said he did not remember (*Vol 2, p 152, ll 9-11*) He was further asked specifically if he knew at whose instance N K Roy examined the witnesses at Darjeeling, and his answer was that he did not remember the fact that N K Roy examined witnesses (*ibid, p 182, ll 23-25*) The other parts of Lindsay's evidence to which Mr Chaudhuri refers (*ibid, p 155, l 31, p 159, l 13, p 161, l 13, and p 163, l 14*) really do not throw any light on the point

The first of such statements taken down by N K Roy at Darjeeling at this time, which is on record, is that of Kshetranath Mukherjee, Head Bill Clerk of the Darjeeling Municipal Office, who afterwards came to depose on behalf of the plaintiff as P W 603, under the name of Swami Oankarananda Giri (*Vol 8, pp 93-100*) This statement is dated the 17th May, 1921 (*Ex Z(27), Vol II, p 227*), but it is noteworthy that the defendants have not been able to produce any list of witnesses of this or of an earlier date, prepared by the Deputy Commissioner of Darjeeling or any other official, containing the names of Kshetranath Mukherjee and other persons admittedly examined about this time, though it is obvious that if Lindsay's answer to interrogatory No 16 referred to this stage of the enquiry, such a letter would undoubtedly have been forthcoming (*Vol 2, p 153, ll 7-10*) Nor has any record been produced showing that Lindsay had at any time before the 17th May, 1921 suggested or even contemplated the collecting of such evidence at Darjeeling or elsewhere Lindsay was asked on the second day of his cross-examination if there was any paper which might help in fixing the time regarding the facts he had deposed to so far he had in fact already spoken generally of the enquiries he had made regarding the claim of the sadhu All that he said in answer was —

"There is 'J H L 2', there is the questionnaire I sent out, there is the notice to the tenants, and of course the replies to the questionnaire they will be in existence somewhere" (*ibid, p 149, ll 5-9*)

"J H L 2", I may mention, is a memorandum of an interview with the plaintiff dated the 29th May, 1921 which afterwards came to be marked as *Ex Z(358), Vol II, p 313* The "questionnaire" he sent out is one which, as will be seen later, came into existence long after the 17th May, 1921, and will be found as an annexure to a confidential letter which Lindsay himself wrote to Dr Pran Krishna Acharya on the 13th August, 1921 (*Ex Z(335), Vol II, p 258*) As regards the "notice to the tenants", it is the "Impostor Notice" which Lindsay issued on the 3rd June, 1921 (*Ex 432, Vol II, p 277*) It is impossible, therefore, to avoid the conclusion reached by the learned trial judge that this portion of the enquiry—the taking of statements of people who knew anything about the cremation, during the middle of May—was the idea of Satyendranath Banerjee and Rai Bahadur Sasanka Coomar Ghosh (*Vol 18, p 109 bottom—p 110 top*)

COMMENCEMENT OF OFFICIAL ENQUIRY

Passing on now more particularly to the course of action taken by Lindsay and the Board of Revenue, it may be stated that some of the facts to be mentioned in connection therewith help us in fixing with tolerable certainty the stage at which the officials actually came to take up the enquiry in the form of getting statements from witnesses regarding the alleged death and cremation of the second Kumar

The defence evidence is that Needham's report of the 5th May, 1909 (*Ex 59*) was delivered to Lindsay at about 9 A.M. the following day at a

place called Kaliganj, and that Lindsay thereupon gave directions to the Deputy Superintendent of Police Umes Chandra Chanda who happened to be present there to go to Jaidebpur and make an enquiry about the sadhu. This officer is said to have accordingly visited Jaidebpur on that day (*D W 25, Vol 12, p 489, ll 30 et seq*), and the enquiry is supposed to have consisted in his putting some questions to the sadhu at Jyotirmoyee's house. The questions were first put in Bengali to which the sadhu made no answer, but when he was afterwards questioned in Hindi, he gave his own name as Ramendra, but was unable to give the name of his wife, and he added he would give out everything if there was a meeting of "big people" and the Commissioner was present and when his Guru would arrive. The police officer was then asked by a lady of the house not to pester him with further questions. The plaintiff, it may be mentioned, does not accept this story, and it appears that Mr Chaudhuri himself put a different version of it to Jyotirmoyee in cross-examination, the police officer who went to enquire being stated to be not the Deputy Superintendent, but the Superintendent of Police, Dacca, one Mr Quarry (*Vol 8, p 363, ll 26-30*). There is evidence given by some other witnesses on the defendants' side, such as Mohini Mohan Chakravarty (*D W 117, Vol 14, pp 379-416*), Rai Sahib Jogendranath Banerjee (*D W 310, Vol 15, pp 435-539*) and Phani Bhusan Banerjee (*D W 92, Vol 14, pp 104-228*), regarding visits said to have been paid by these gentlemen to the sadhu during this period, ostensibly with the object of satisfying themselves as to his identity with the second Kumar. All this evidence will have to be fully considered hereafter, but it hardly throws any light on what Lindsay had been doing in the matter about this time.

SUPPRESSION OF OFFICIAL RECORDS

Lindsay's own testimony regarding the events of these days is really of little value. Seeing that he was deposing to events which had happened years ago, he might perhaps be excused for his faulty recollection. What is surprising is that the defendants who had it in their power to produce contemporaneous official records which might have helped the witness to refresh his memory did not for reasons best known to themselves choose to follow that straightforward course, and the surprise inevitably mingles with regret when it is remembered that the de facto defendants were a body like the Board of Revenue. The result is that an important witness like Lindsay, who was evidently called by the defendants because he could throw light on many a vital point in the case, is reduced to the position of having to say that he does not remember even such facts as, for instance, that he received a report from Needham on or about the 5th May, 1921 (*Vol 2, p 142, ll 16-17, p 169, l 23, p 171, l 5*), or that he himself drew up a report for the Board of Revenue on the 10th May, 1921 (*ibid, p 171, ll 27-29, p 174, ll 11-15*), even after the contents of these reports were specifically recalled to his mind (*ibid, pp 169-170 and pp 174-176*).

On behalf of the plaintiff it was suggested to Lindsay that shortly after Needham's report, Satyendranath Banerjee or somebody on his behalf saw him at Dacca, that Satyendra or his friend gave him copies of death and cremation certificates of the second Kumar (*ibid, p 171, ll 10-11 and p 173, ll 26-31*), and further that he was from the very beginning in consultation with Rai Bahadur Sasanka Coomar Ghose (*ibid, p 173, ll 33 et seq*). Lindsay, of course, did not remember, but curiously, he recollected enough to be able to say that Satyendra "did not convey anything of importance to him in those days", "even less so his friends" (*ibid, p 171, ll 15-19*). It would appear, however, from the report of the 10th May that

he had with him at the time copies of the death and cremation certificates—two certificates of death, one given by Col Calvert and the other by Crawford, the then Deputy Commissioner of Darjeeling, and two certificates of cremation, one by Satyendranath Banerjee and C J Cabral, and another by Shoshu Bhusan Banerjee, a clerk in the Accountant's office, Darjeeling Treasury, and Satya Prosad Ghoshal, a clerk in the P W D Sub-Divisional office, Darjeeling. Who gave him these copies? A fact which has been satisfactorily established is that Satyendranath Banerjee made over such copies to Lethbridge in Calcutta within a week of the receipt of Needham's report, but there is no evidence to show that Lethbridge sent them to Lindsay on the other hand, there is Satyendra's statement (*Vol 16, p 489, ll 27-28*) about sending copies of the Insurance affidavits to the Collector, which is no doubt opposed to Lindsay's own statement just referred to. The report of the 10th May would show that Lindsay had already met Rai Bahadur Sasanka Coomar Ghose, and had a consultation with him, which from all indications would appear to be a fact, and if this was so, here was a not unlikely channel through which Lindsay might have got the certificates.

LINDSAY "CONVINCED" FROM THE BEGINNING OF KUMAR'S DEATH

At the date of this report Lindsay had apparently "convinced" himself of the death of the second Kumar. "There is no doubt whatsoever", he writes, "that the man (that is, the second Kumar) is dead and that the Court of Wards has been perfectly justified in acting on the assumption of his death ever since it took charge of his estate". In his evidence Lindsay says that he had been told the story of rain and storm at Darjeeling on the night of the Kumar's supposed death, and it was from this "rain-story" that he was convinced "from the first", and "convinced beyond reasonable doubt", that the plaintiff was not the second Kumar (*Vol 2, p 142, ll 26 et seq and p 144, ll 24-25*). He had the story checked up at once by reference to the "rainfall records" of the time from the Calcutta Gazette (*ibid, p 142, ll 26, et seq*), and was satisfied that there had been no rain at all at Darjeeling on that night. In the report of the 10th May, however, he mentions only the certificates of death and cremation, and nothing about this checking of the rainfall records, which, it may be taken, therefore, followed at a later stage. Lindsay finds it hard to say when in fact he first heard the story or from whom he heard it (*ibid, p 160, ll 15-17*).

One important point may be observed here, and it is that Lindsay makes it quite clear in his evidence that at no stage did he want any statements of witnesses to be recorded in order to satisfy himself as to the death of the Kumar, for he was quite satisfied about it from the beginning. All that he wanted was to get information, not on the question of death, but as regards "the incidents at the death", or as he puts it otherwise, "the incidents on the occasion of the cremation" (*ibid, p 161, ll 26-27 and p 162, ll 1-6*), which to my mind is sufficient refutation as far as one can get from Lindsay's mouth of the theory that the Darjeeling enquiry had been initiated by him or at his instance.

The earliest document on record after the 10th May, 1921, showing further action taken by Lindsay in the matter of the sadhu, is *Ex 436 (Vol II, p 229)*, being a confidential D O from him to Lethbridge, dated the 25th May, 1921, with which he was forwarding for the information of the Member of the Board of Revenue, the statements of witnesses examined at Darjeeling, which, there is every reason to suppose, Rai Bahadur Sasanka

Coomar Ghose had brought down with him from Darjeeling Lindsay also sent along with these statements the opinion of the Standing Counsel, Mr B L Mitter, which has been already referred to (*Ex Z(357)*, *Vol II*, *p 218*), and another document which has been described as "Notes by the Government Pleader of Dacca recorded at Darjeeling"

It is worth while pointing out here that these Notes have not been produced by the defendants at the trial, though Lindsay was cross-examined about them (*Vol 2*, *pp 164-165*), and the plaintiff left the defendants in no doubt as to the case he was making thereon. It was definitely suggested on behalf of the plaintiff that Rai Bahadur Sasanka Coomar Ghose while at Darjeeling had been going about and seeing the parties whose statements subsequently came to be recorded, and that he and his friend Satyendranath Banerjee were in fact the "principal actors" in the proceedings which were going on there (*ibid*, *p 163*, *ll 30-31*, *p 164*, *ll 12-15*, *ll 27-30*, *ll 32-34*, and *p 165*, *ll 5-7 and ll 27-30*). Obviously, it should have been the easiest thing for the defendants to have contradicted this case by the production of the Notes, if not by other trustworthy evidence. As it is, on such an important question as that of the circumstances which led to the recording of the statements at Darjeeling, the defendants have chosen to leave the court in the very unsatisfactory position of having to rely solely on the uncertain testimony of Satyendranath Banerjee.

Rai Bahadur Sasanka Coomar Ghose could no doubt have thrown considerable light on this as on other important points in the case, having admittedly taken an active interest in various proceedings and transactions on behalf of the defendants from the very outset. His position in this respect would indeed appear to have been very much like that of a solicitor engaged in collecting materials for the preparation of his client's case. One cannot help regretting, therefore, that by his acceptance of a brief as one of the defendants' lawyers at the trial, the court was deprived of the valuable assistance he might have given from the witness-box.

Apart from the documents already referred to, there were other documents consisting mostly of official correspondence of a revealing character which were put to Lindsay in the course of his cross-examination, but none of which the defendants have cared to disclose, and it is an interesting question how far their non-production is sufficiently explained by a claim of privilege which the defendants chose to put forward in answer to the demand made by the plaintiff who specifically called for these papers by a sworn petition of the 6th September, 1934 (*Vol 10*, *pp 104-129*), not to mention other similar petitions submitted by him from time to time both before and after that date (as, for instance, his petition of the 24th July, 1931, *Vol 2*, *p 70*).

It seems to me to be fully established on the evidence as it stands that it was only after Rai Bahadur Sasanka Coomar Ghose had placed the first batch of statements of Darjeeling witnesses before Lindsay, which as already stated the latter forwarded to Lethbridge by his D O of the 25th May, 1921, that Lindsay set about getting statements of other witnesses on similar lines. Whether he did so of his own accord, or was moved to take such action at the instance of Rai Bahadur Sasanka Coomar Ghose, is again a question which might have been easily cleared up by the defendants by the production of official records, but they did not choose to do so. There is evidence on the defendants' side from D W 435, a Deputy Collector of the name of Romesh Chandra Datta, then in charge of the Wards Department of the Dacca Collectorate, that this gentleman confiden-

nally recorded the statements of a number of witnesses at Dacca about this time under the orders of Lindsay given as Collector of the district (Vol. 17, p. 411, ll. 11-12), and it is to be noted that the earliest statement which he says he recorded was that of Debabrata Mukherjee a subordinate judge (*ibid.*, p. 411, ll. 21-23 26-27), which was on the 26th May, 1921, that is, just one day after Lindsay's said D O letter (See the statement, Ex. Z(110), Vol II, p. 231).

It may be added here for what it is worth that according to plaintiff's definite suggestion put to the witness in cross-examination, Lindsay in fact wrote a letter on the 27th May 1921, to Lees Member of the Board of Revenue, at Darjeeling that the Government Pleader had gone to Calcutta to obtain the names and statements of witnesses present there who could give evidence about the cremation of the second Kumar, and that from Calcutta he was going to Darjeeling again to see Lees. In the meantime, Lindsay had secured some photographs of the second Kumar which he was forwarding to Lees with a request that Lees might make them over to the Government Pleader, adding that they should be useful in taking statements of people who saw the dead body on the funeral pyre. The contents of this letter were put to the witness (Vol 2 p. 187 l. 26—p. 188, l. 3), but he, of course, did not remember, nor did the defendants care to produce the letter.

SISTERS' PETITION TO LINDSAY FOR ENQUIRY AS TO IDENTITY

The next fact which requires to be mentioned is that somewhere about the fourth week of May, 1921, a petition was filed before Lindsay by Gobinda Chandra Mukherji, husband of the late Indumoyee Devi eldest sister of the Kumar and the other two sisters of the Kumar, Jyotirmoyee Devi and Tarinmoyee Devi asking for an enquiry as to the identity of the sadhu who was claiming to be the second Kumar. Admittedly no action was taken on this.

Jyotirmoyee Devi says that this petition was filed in consequence of a letter which Ram Satyabhama Devi, the grandmother, had received about this time from the Maharajadhiraj of Burdwan (Vol. 8, p. 308, ll. 32-35). This letter has been produced by the plaintiff and is an interesting document (Ex. 266, Vol II p. 177) the genesis of which, however, remains unexplained except by what the writer himself says in the letter. The Maharajadhiraj was then a Member of the Executive Council of the Governor of Bengal and was in charge of the department having control over the Board of Revenue and necessarily over all Courts of Wards in the Presidency. The letter is dated Darjeeling the 16th May, 1921 and purports to be a communication from him to Ram Satyabhama Devi as the then senior-most member of the Bhowal Raj family, which he says he was writing, not as a Member of the Government, but "as a friend apprehending lest the glory of an old Raj family should be impaired". He asks in it if the Ram has seen the man who was declaring himself as the second Kumar of Bhowal and what impression she has formed in her mind. She must know that dead men do not come back to life, but says the Maharajadhiraj, "if there be any other hidden mystery in respect of the death of the Kumar which the general public do not know, that is the dead man who was burnt is or was not the Kumar but somebody else and since that date the Kumar disappeared and has reappeared now in the garb of a sannyasi—if the sannyasi can prove it by evidence and it goes to all before the same, then it is a different matter—and in that case a highly amazing incident in the

family will be revealed" There can be no question that the letter fully confirms the statement of Jyotirmoyee Devi

In the course of Lindsay's cross-examination, the plaintiff put to the witness a letter—again a document not produced by the defendants—which Lindsay is supposed to have written to Emerson, Commissioner of the Dacca Division, on the 1st June, 1921, specifically referring to a petition which had been filed before him as District Magistrate by Gobinda Chandra Mukherjee and the two sisters of the Kumar, Jyotirmoyee Devi and Tarinmoyee Devi (*Vol 2; p 190, ll 5-12*) Lindsay as usual did not remember anything about it, though earlier in his evidence, on being asked if the grandmother and the sisters and the public had repeatedly asked for an enquiry into the identity of the person who claimed to be Kumar, he had said, "I think there were such applications" (*ibid, p 158, ll 26-29*). Lindsay did not recollect, however, if anything was done on such applications On his evidence there was, of course, very little left for him to do in the way of an enquiry on the lines suggested in these petitions

As early as the 10th May, 1921, if not earlier, Lindsay had formed the "conviction"—on whatever materials it might have been—that the second Kumar was dead and that the sadhu could not be he An enquiry for the purpose of establishing or dis-establishing the identity of the claimant would not only, therefore, not be necessary, but it might, on the other hand, encourage the agitators who were propounding this impostor by producing a belief in the public mind that the authorities themselves entertained a reasonable doubt in the matter

The only question which apparently troubled Lindsay from the beginning was whether any, and if so, what legal action was to be taken against the man who was posing as the second Kumar, and as has been already seen, opinion of the Standing Counsel was in fact sought and obtained on the point The evidence which afterwards came to be collected at Lindsay's instance was, as he said, only for the purpose of getting information about the "incidents" which took place at the time of the cremation, and there could, of course, be no question of his letting the other side know what that evidence was In fact, as he came to state afterwards in a letter of the 9th August, 1921 to the Commissioner (*Ex 435, Vol II, p 336*), the evidence was being kept "confidential" and even the names of witnesses were being kept a closely guarded secret

ENQUIRY REFUSED

All the same it seems to be fairly clear that Lindsay was being pestered on behalf of the plaintiff to grant him an opportunity of producing evidence of his identity, and however much his personal inclinations might have been against such a course, he did not probably think it wise to give a point-blank refusal to the demand,—at any rate he felt he should not do so without express instructions from the higher authorities There was obviously this to be said in favour of allowing evidence to be recorded, namely, that by agreeing to do so, he might with justification call upon the tenants to stop payment of subscriptions with a view to financing a civil suit by the plaintiff to establish his identity The attitude of the tenants must have been sufficiently clear to him, specially after the formation of the Bhowal Taluqdar and Proja Samiti, and it is the defendants' own case that by their propaganda the tenants were helping to raise large subscriptions for the plaintiff to enable him to go to the civil court, if necessary

MISLEADING SUGGESTIONS TO PLAINTIFF

As early as the 5th May, 1921, it will be observed, Needham in his report to Lindsay (*Ex 59*) had suggested "a sifting enquiry about the sadhu" (*Vol II, p 213, ll 10-11*), and as Mohini Mohan Chakravarty, D W 117, who is supposed to have drafted the report for Needham along with Rai Sahib Jogendranath Banerjee, D W 310, explains (*Vol 14, p 403, ll 32-33 and p 410, l 19*), by this they meant an "enquiry into the identity of the plaintiff" No such enquiry was, however, held by Lindsay then or at any time later, and it is perfectly clear that he was not minded to do so at any stage Yet from his own record of an important event to which reference will be presently made, namely, a meeting which the plaintiff had with him on the 29th May, 1921, it will appear to be a fact that at this interview Lindsay did give the plaintiff to understand that if the plaintiff preferred to produce evidence of identity before him, he was willing to record it (*Ex Z(358), Vol II, p 313*) This was doubtless put as an alternative to a suggestion that the plaintiff could prove his identity in court, but if Lindsay's memorandum of this incident is to be relied on, as the defendants contend it should be, there can, to my mind, be no escape from the conclusion that Lindsay was here misleading the plaintiff

It seems to me to be an idle pretence to suggest, as the defendants wanted to do, that Lindsay did in fact intend to hold an enquiry into identity, but could not do so merely because the plaintiff's pleaders who promised at the interview to file a petition the next day for such an enquiry failed to present one

For one thing there is no evidence to show that such a petition was not filed on the other hand, as already seen, we have Lindsay's own admission that there were repeated applications for enquiry from the grandmother, the sisters and the public (*Vol 2, p 158, ll 26-29*) Then again the fact remains, as deposed to by Jyotirmoyee Devi, that at least one such petition had been presented by Gobinda Chandra Mukherjee, Jyotirmoyee herself and her sister Tarinmoyee (*Vol 8, p 308, ll 32-33*) It may be that this petition had been filed shortly before the interview, for Jyotirmoyee says it was done during the five days' visit of Tarinmoyee to her, and according to her earlier statement (*ibid, p 305, ll 30-31*), Tarinmoyee had come to her house three or four days after the big meeting of the 15th May, 1921 Even so, one fails to see what was there to prevent Lindsay from taking action on this petition The real answer will appear to have been provided by Lindsay himself in his evidence (*Vol 2, p 159, ll 1-5*) —

"Q—Was there anything that stood in your way to prevent you from holding an impartial and sifting enquiry in this matter?

"A—I don't know Except my own conviction that he was not the Kumar and that the claimant could do what he has done now, namely, attempt to prove that he was the Kumar in open court "

The only regret is that Lindsay would not open his real mind either to the plaintiff or to any one on his behalf at the time Having somehow or other persuaded himself to believe that the second Kumar was dead, all his efforts seem to have been directed towards collecting details of the "incidents" which were said to have happened at the death or cremation of the second Kumar, and devising action to put down the sadhu and his supporters,—acting presumably at every step in close consultation with the Government Pleader Apparently, however, he was not prepared to say openly

to the plaintiff that he refused to hold an enquiry into his identity as the plaintiff demanded

LINDSAY'S WARNING NOTICES

On the 28th May, 1921, it appears Lindsay actually issued an order, which Needham caused to be circulated, warning all officers of the Bhowal Court of Wards Estate that so long as the Court of Wards Estate did not acknowledge the sadhu as the second Kumar, none of them should do anything to inspire confidence in the people that the sadhu was the second Kumar if any officer did so, it would be taken as if he was acting against the Court of Wards and he would be punished. It was added that the Court of Wards alone would decide if the sadhu was the second Kumar (*Ex 206, Vol II, p 276*)

PUNJAB ENQUIRY

About this time Lindsay took another important step which in its sequel came to be a vital part of the defendants' case touching the identity of the plaintiff, for it appears that on the 31st May, 1921, under instructions from Lindsay, a police officer of the name of Momtazuddin Talukdar (*D. IV. 403, Vol 17, pp 223-252*) and a steward of the Raj Estate named Surendra Kumar Chakravarty (*D IV 408, ibid, pp 268-287*), were in Calcutta on their way to the Punjab in an attempt to trace out the antecedents of the sadhu who had been claiming to be the second Kumar. As to who supplied Lindsay with definite information that the sadhu was a Punjabi, what led him to think that such an enquiry in the Punjab was necessary or would lead to any fruitful results, whether the enquiry was his own idea or somebody else's, how it came about that neither he nor even Needham, but Bibhabati Devi was the first to receive a wire saying, "Antecedents traced everything finished" (*Vol II, p 333 top*)—are only some of the many intriguing questions arising out of this Punjab investigation to which there are no satisfactory answers. All that need be stated here is that this enquiry was evidently found enough by Lindsay to satisfy himself that the plaintiff was no other than one Sunderdas, a disciple of Baba Dharam Das—the Guru whose name was tattooed on the plaintiff's arm, the original name of Sunderdas before he became an ascetic being stated to be Mal Singh, an inhabitant of village Aujla in the district of Lahore.

LINDSAY'S INTERVIEW WITH PLAINTIFF ON MAY 29, 1921

Coming now to the interview the plaintiff had with Lindsay, which it is admitted took place at Lindsay's house at Dacca on the 29th May, 1921, it is undoubtedly an event of great significance in the history of the case. The plaintiff relies very strongly on the fact of the interview, while the defendants attach greater importance to the record of the interview which Lindsay drew up in the shape of a memorandum, produced by the defendants and marked as *Ex Z(358)* on their side (*Vol II, p 313*)

There can be no doubt that this face to face encounter of the supposed "impostor" with the Collector of the district took place at the instance of the impostor himself. Mr Chaudhuri wanted to suggest that the plaintiff must have been sent for by Lindsay, but frankly stated that there was no evidence to support this. He referred to a letter of the 27th May, 1921, which Brojolal, husband of Tarinmoyee, wrote from Dacca to Jyotirmoyee, asking her to come to Dacca once with the Kumar (*Ex 45, Vol II, p 312*).

in the following terms —“The sadhu appeared to be an up-country (man) with a beautifully clear skin with no signs of syphilis, His hair was golden rather than red like Atkullah's”

The memorandum itself shows that Lindsay was putting questions to the plaintiff, and the account which is to be found in it so far as it goes can, therefore, be only a record of such facts as Lindsay understood the plaintiff to be giving in his answers. In order to test the value of this record, it is relevant to consider what questions Lindsay might reasonably be expected to have put or not put to the plaintiff, and for this purpose it is important to know in the first place what materials regarding the plaintiff were in his possession at this date, and secondly, what was the object he had in view in questioning the plaintiff.

Lindsay had undoubtedly with him for some considerable time Needham's report of the 5th May, 1921 (*Ex 59, Vol II, p 212*). Then, there were the facts mentioned by Lindsay himself in his report of the 10th May, 1921. His D O letter to Lethbridge of the 25th May, 1921 (*Ex 436, Vol II, p 229*), again, shows that he had since obtained the statements of a number of persons examined at Darjeeling claiming to have personal knowledge of the second Kumar's death and cremation,—only one of such statements being on record, that of Kshetranath Mukherjee, dated the 17th May, 1921 (*Ex Z(27), Vol II, p 227*). Lindsay had also the notes of Rai Bahadur Sasanka Coomar Ghose made at Darjeeling, referred to in the same letter, which as already pointed out the defendants have not produced. Lindsay must likewise have got with him the statement of another witness Debabrata Mukherjee (*Ex Z(110), Vol II, p 231*), recorded at Dacca under his order on the 26th May, 1921, by Romesh Chandra Datta, Deputy Magistrate, D W 435. There was doubtless another useful channel of information also open to Lindsay—Rai Bahadur Sasanka Coomar Ghose, the Government Pleader, and through him, Satyendranath Banerjee,—only that the defendants would not allow it a free flow.

There is one important fact of which Lindsay could not possibly have been in ignorance at this time, and it is that it was being freely given out on the plaintiff's side at Jaidebpur that the second Kumar had been poisoned at Darjeeling. Satyendranath Banerjee admits in his evidence that before he left for Darjeeling in the company of Rai Bahadur Sasanka Coomar Ghose, he had received a telegram from the Assistant Manager Mohini Mohan Chakravarty, which “disclosed the charge of poisoning against him and a doctor” (meaning Dr Ashutosh Das Gupta), and he showed this telegram to Lethbridge (*Vol 16, p 490, ll 35-37*). That such a charge was being openly made at Jaidebpur is also confirmed by the evidence of Mohini Mohan Chakravarty, D W 117 (*Vol 14, p 384, ll 10-13*), and it is in fact defendants' own case as stated to us by Mr Chaudhuri that the poisoning story was started about the 8th May, 1921, in consequence of which Dr Ashutosh Das Gupta had to run away for his life from Jaidebpur.

From a document to which reference will be made later (*Ex 443, Vol II, p 238*), it will appear that by the 3rd or 4th June, 1921, a statement had been made available to the Board of Revenue containing what was described therein as “*The Story of the Sadhu*”. There is no direct evidence as to who supplied the Board of Revenue with this story, but if, as is not unlikely, it came to them through Lindsay, Lindsay may be taken to have known about it before the plaintiff's interview with him.

It will be seen, therefore, that there was no lack of materials in Lindsay's possession with which he might have confronted the plaintiff when he turned up before him on the 29th May, 1921.

Lindsay was asked what was his object in questioning the plaintiff at the interview, and he said that he wanted to find out the explanation how a man who had been cremated in Darjeeling twelve years before could possibly be alive at the time (*Vol 2, p 146, ll 11-14*). To a further question, what led him to make a memorandum, he replied, "I am not sure I wanted to get the man's own statement of his case as early as possible I think that was the idea" (*ibid, p 147, ll 9-11*).

How, according to his memorandum, did Lindsay carry out this object? It is significant that the memorandum does not show any attempt on his part to verify at first hand from the plaintiff himself any of the facts regarding his antecedents which Lindsay must have been apprised of. Not a single question is asked as to where the plaintiff had been or what he had been doing during the twelve years of his disappearance. Not a word is put to him regarding the tattoo-mark on his arm which Lindsay now recollects the plaintiff showed him at the interview. Not even a note is to be found as to whether the plaintiff said anything about the charge of poisoning, or whether he was at all questioned about it.

Mr Chaudhuri suggested that it was quite enough for Lindsay's purpose to have put only a few test questions, but if that was so, one wonders why the most important test, that of the plaintiff's ability to speak Bengali, was not put to him, or why he was not definitely asked, for instance, to give the names of the doctor or doctors who had treated him in Darjeeling or of the persons who had accompanied him there, or to give some details of the topography of Darjeeling. How would it serve Lindsay's object if all that he was able to elicit from his interviewer was that he did not remember the name of the house at Darjeeling where he is supposed to have put up, or that he was suffering only from a boil for which "there was no special cause", or that he recovered his senses in the presence of only *one* sadhu, or that the sadhu told him that he had found him lying on the ground as if he had been thrown there, or that the sadhu did not say whether he had found him in the day or at night?

It is worthy of note that defendants have given no evidence to show that at the date of the interview Lindsay knew or had been told of any facts about the second Kumar from which he was in a position to conclude that the answers which the plaintiff gave as recorded in the memorandum at once belied his identity with the second Kumar.

The only answer by which the plaintiff may be supposed to have given himself away is the statement imputed to him in the memorandum that he had been ill of "pneumonia" at Darjeeling for two or four days. As to this, it is enough to refer to the very pertinent observations of the learned trial judge at *p 305 of Vol 18*. It is common case that the conversation was carried on in Hindi (*Vol 2, p 139, l 13, and Vol 4, p 115, ll 11-12*). Lindsay no doubt says that he was conversant with Hindi and Bengali (*Vol 2, p 142, l 3*), but as the learned judge points out, the extent of his ability to follow Hindi is not known. There is on the other hand a letter from Lindsay himself, dated the 28th August, 1921, on record (*Ex Z(352), Vol II, p 341*), in which he says that he is waiting to go down to interview the plaintiff's Guru Dharam Das till Quarry returns from tour, as "Quarry knows that up-country language to perfection and will be able to talk to the man much better than I". Apart from this, it is not shown, whether on the plaintiff's evidence or on that of the defendants, that this case of "pneumonia" at Darjeeling had been made or suggested by or on behalf of the plaintiff to anybody at any stage. If the plaintiff was an

impostor, is it reasonable to suppose that when he went to Lindsay, whether asked or unasked, he should for no intelligible reason whatever be suddenly making such a material departure from his story of poisoning, though he must have known that this story had been in circulation right from the beginning? If, on the other hand, the plaintiff be supposed to be the real Kumar, is it not equally unlikely for him to have made such a stupidly false statement? What is more probable is the suggestion which was put to Lindsay in cross-examination —

“Q Did he (plaintiff) say he suffered from *diarrhœa* at Darjeeling?”

His answer was —“I do not know anything except—(shown ‘J H L, 2’ —the memorandum) from this document I see I recorded “pneumonia” I have no recollection of doing so”

~~Further pressed if he could swear he had not made a mistake in recording, Lindsay said, “No” (Vol 2, p 147, ll 4-8)~~

Not much stress can be laid on the plaintiff’s supposed mention of only *one* sadhu to Lindsay, as recorded in the memorandum, notwithstanding that in answer to a leading question from defendants’ learned counsel, Lindsay’s recollection becomes unusually definite on this particular point, though it was apparently not a point of much consequence at that stage

Lindsay, as already pointed out, makes a marginal note in the memorandum that the sadhu appears to be an up-country man with a beautifully clear skin, with no signs of syphilis. What, one may ask, led him to look for syphilis on the plaintiff? There is no evidence, the documents on record certainly do not show, that any report was current anywhere at this stage about the second Kumar having suffered from such a complaint. Supposing that Lindsay had got the information from Rai Bahadur Sasanka Coomar Ghose or Satyendranath Banerjee or any other source, one wonders why in that case Lindsay was content with merely making a note that the plaintiff had no signs of syphilis, instead of putting him a specific question as to whether he had syphilis or not when he had gone to Darjeeling.

It remains a fact,—at any rate the defendants have not given any evidence to the contrary,—that Lindsay did not send a report of this interview to any of the higher authorities, as it is only reasonable to suppose he would have done, had anything important really come out of the plaintiff’s mouth at this meeting. If Lindsay was writing to Emerson, Commissioner of the Dacca Division, on the 1st June following, as the plaintiff suggests he did (Vol 2, p 190, l 6), this letter should doubtless have contained a reference to the interview, but as already stated, the defendants have not produced this document.

It seems to be quite clear that Lindsay did not attach any importance whatever to this interview, far less anything like the importance which learned counsel for the defendants would ascribe to it now.

It is somewhat remarkable that though the defendants rely so strongly on this memorandum, not a single question was put to the plaintiff on the subject in cross-examination. Plaintiff had referred to his interview in his examination-in-chief in the following terms —

“While I was at Tarinmoyee’s house I met Mr Lindsay, Collector of Dacca. I met him at his house. I went with Peary Lal Ghosh, a resident of Dacca. He was a pleader. Sarat Chakravarty, another

pleader came with me Rajendra Babu, Zemindar of Srinagore, also came with me Sarat Babu is dead" (Vol 4, p 108, ll 18-22) Later, he gave to his counsel a specific denial of the statements ascribed to him in Lindsay's memorandum This is what he said —

"It is false that I told Mr Lindsay I had 'pneumonia' at Darjeeling It is false that Mr Lindsay asked me the name of the house at Darjeeling, or that I forgot to give it It is false that I had told him I had an abscess It is false that Mr Lindsay asked me when I had gone to Calcutta last before going to Darjeeling or that I said 'I did not remember' It is false that I told him that when I returned to consciousness only one sannyasi was present Mr Lindsay during my interview with him recorded nothing He talked in Hindi I also replied in Hindi" (*ibid*, p 115, ll 4-12)

Mr Chaudhuri probably did not think it safe to try and elicit from the plaintiff his version of the interview, when the witness had not given any account in his evidence-in-chief All that learned counsel did before us was to point to two petitions filed on behalf of the plaintiff on the 22nd and 25th January, 1935, respectively (Vol 11, p 504 and Vol 12, p 12), showing that one "*Lala Rajendra Kumar Bose, Zamindar, living at Zindabazar, Dacca Town*", whom Mr Chaudhuri would identify without any evidence as the "Rajendra Babu of Srinagore" named by the plaintiff, had been cited as a witness, but was not actually called Of the other two persons who are said to have accompanied the plaintiff, Sarat Chandra Chakravarti was already dead, as stated by the plaintiff himself, and it is now admitted before us that Peary Lal Ghosh had also died

It may be pointed out here that in the memorandum as printed in Vol II, at p 313, only two names are mentioned, Sarat Chandra Chakravarti and Peary Lal Ghosh, and then follow the words "*and I think the Kashimpur Manager*" A reference to the original document which was written in ink will, however, show that the words "*I think the Kashimpur Manager*" are enclosed in brackets in pencil, and on the top of them there is a faint overwriting in pencil, "Rajendra Nath Bose, Zr of Srinagar" ('Zr' being obviously a contraction for 'Zemindar') Lindsay's attention was drawn to these pencil alterations, but he was evidently not in a position to give any explanation, nor did he say that the writing was in his hand (Vol 2, p 146, ll 25-32) The word "Joydebpur" in the memorandum is also cut out in ink, but Lindsay's initials appear under it (*ibid*, p 146, ll 34-36)

RECORD NOT RELIABLE

Considering all the circumstances, I have no hesitation in coming to the conclusion that Lindsay's memorandum is a document on which it would not be safe to place any reliance for the purpose indicated by Mr Chaudhuri Not only is it difficult to accept it as a full or reliable record of what the plaintiff said, but apart from the obviously incorrect reference to "pneumonia" in it, it does not, in my opinion, establish such ignorance of vital or material facts on the part of the plaintiff as may tend to throw suspicion on the story as unfolded at the trial The identical story is, in fact, traceable in its essential outline in the record as it stands, meagre and perfunctory as the record is—the story of passing into a state of unconsciousness which was mistaken for death, finding of the body at the cremation ground in a wet condition, and subsequent rescue from that place

There remains one other significant circumstance to be noticed in this connection, and it is that the memorandum does not show, nor does Lindsay

say or suggest in his evidence, that the plaintiff refused or showed any disinclination to answer any questions. It was certainly not his fault, therefore, if the opportunity was not taken to elicit from him more facts which might have pinned him down completely to a definite and detailed story. The defence case is that the plaintiff had declined to give any information about his previous history to the Court of Wards officials after the "*Atma Parichaya*", but had given out that he would prove his identity, if necessary, when the time came before the higher authorities. See Mohini Mohan Chakravarty's report to Needham of the 6th May, 1921 (*Ex Z(203)*, Vol II, p 215, ll 9-11, 17-20 and 34-35), see also, among other witnesses, D W 25 (Vol 12, p 489, ll 30-33). In his report of the 10th May, 1921, Lindsay himself states that the plaintiff had told the Superintendent of Police that he wanted the Commissioner, the District Magistrate and the leading gentlemen of Dacca to convene a meeting at which he would satisfactorily establish his identity. What was there, then, to prevent Lindsay from questioning the plaintiff at the interview in order to test his identity as far as he could? Is it to be believed that the plaintiff was so astute and Lindsay so simple-minded that the plaintiff was able to put him off by a mere offer to file a petition the next day for an enquiry?

ISSUE OF IMPOSTOR NOTICE

As was to be expected, the interview produced no change in Lindsay's attitude. His course had already been set. He is not now certain whether the tenants of the estate had actually started paying rent to the plaintiff, but "there was certainly an apprehension of payment of rent to him" (Vol 2, p 185, ll 35-36). This, of course, had to be stopped. On the 28th May, 1921, as stated before, he had issued a *purwana* to the officers of the estate that they must not "inspire confidence in the people" that the sadhu was the second Kumar (*Ex 206*, Vol II, p 276), but something had to be done about the tenants. He was quite clear that the Board of Revenue could not acknowledge the plaintiff as the second Kumar. There was no reason to suppose, therefore, that the Board would not approve the issue of a warning notice that any tenant paying rent for the share of the second Kumar to anybody except to the Court of Wards would do so at his peril. He might have had a feeling in his mind that if he allowed the plaintiff to produce his evidence of identity before him, he would have greater justification for telling the tenants that there was no necessity for them to pay any money to the plaintiff. But evidently some action had to be taken. It is not known if he consulted his adviser the Government Pleader in the matter, or the Government Pleader went up to Darjeeling again to see the Member of the Board of Revenue on the subject. The fact that appears on record is that on the 3rd June, 1921, Lindsay actually issued a notice in Bengali in the following terms, which was broadcast throughout the estate —

"NOTICE

"All the tenants of the Bhowal estate are hereby informed that the Board of Revenue has got *conclusive proof* that the dead body of the second Kumar of Bhowal was burnt to ashes in the town of Darjeeling twelve years ago. So the sadhu who has been declaring himself as the second Kumar is an impostor

Any one who will pay rents or subscriptions to him will do that at his own risk

/ "By order of the Board of Revenue,
J H LINDSAY,
Collector, Dacca,
3-6-21 "
(Ex 432, Vol II, p 277)

The notice, it will be seen, goes very much beyond warning the tenants not to pay rents or subscriptions to the plaintiff except at their own risk. It declares that the Board of Revenue had "*conclusive proof*" that the dead body of the second Kumar had been cremated. What was this "*conclusive proof*", Lindsay was asked in cross-examination. The reply he gave was characteristic: "I do not know, beyond the death certificate and the absence of rain" (Vol 2, p 189, l 11). There were doubtless also the statements of some witnesses in his possession at this date, but he did not refer to them. It was suggested on behalf of the plaintiff that the number of such witnesses examined at Darjeeling before this date was only four, of whom three had not known the Kumar before and the fourth had not gone to the cremation ground, while none of them had seen the body (*ibid*, p 189, ll 15-17). Of these statements, that of Kshetranath Mukherjee only is on record (Ex Z(27), Vol II, p 227). As to whether these statements, even if Lindsay be supposed to have relied on them before making the impostor declaration, could really be regarded as "*conclusive proof*" of death and cremation, is perhaps not very material, except as indicating the extent to which Lindsay was prepared to go at this stage. Certain other statements, it may be added, were recorded at Darjeeling on the 2nd June, 1921 (Vol II, pp 233, 234 and 235), but obviously these could not have been available to Lindsay before the issue of the notice.

The publication of this impostor notice apparently produced considerable public feeling, and had an unfortunate sequel. It led to a riot at Mirzapur on the 10th June, 1921, in course of which the police had to open fire and a man named Jhumar Ali was shot dead. A riot case was started against some of the tenants, and there was a counter-case of murder against the police (*see Lindsay's cross-examination*, Vol 2, pp 192-193, D IV 3, Vol 12, pp 128-129, and Jagadish Chandra Chowdhury, Vol 2, p 92, ll 28 et seq). The case against the tenants ended in their acquittal, and it is said one of the two police officers implicated in the other case confessed guilt.

"THE STORY OF THE SADHU"

A further stage in the enquiry regarding the plaintiff which, as indicated before, had by now been taken up by the Board of Revenue, is evidenced by a letter of the 7th June, 1921 from Lethbridge to S W Goode, the then Deputy Commissioner of Darjeeling, written under the direction of Lees, Member of the Board, forwarding a list of 8 persons whose statements were required to be recorded by N K Roy at Darjeeling (Ex 443, Vol II, p 238). Along with this list was a paper containing "The Story of the Sadhu" to which reference has already been made, as well as a list of interrogatories to be put to the witnesses. This document contains an endorsement of the Government Pleader, Rai Bahadur Sasanka Coomra Ghose, under date 3-6-21, showing quite clearly his connection with this proceeding.

The "Story of the Sadhu", which the learned judge sets out at p 317 of Vol 18, is a very interesting statement and requires more than passing

notice It gives a number of significant details such as—(1) that the Kumar was declared to be dead "on the *midnight* of the 8th May, 1909", (2) that the body was *placed on the funeral pyre*, and before it was set on fire, heavy storm and rain came on which drove away the attendants, (3) that when the attendants returned and found the body gone, they set fire to the empty pyre and went back home with the story that the body had been cremated, and (4) that after the attendants had run away, a sannaysi came up and perceiving that life was not extinct, removed the body to his quarters and by the application of some charm brought it back to life

Not content with giving this story, the statement goes on to add a few comments and helpful suggestions In the first place, care is taken to point out that the story is "considered absurd and untrue", and it is then stated that some interrogatories are attached to the document to indicate the lines on which statements of witnesses are to be taken Then follow some details about the second Kumar such as that he was a man of "very fair complexion, of stout build, of strong physique, with brownish hair", and was 27 years of age when he died in a house called "Step Aside" below the Mall there were with him at the time his wife, her brother, a few officers and some menial servants It is then added that "*the rainfall report of the time shows that there was no rain either on the 8th or on the 9th in Darjeeling*" At the end of the questionnaire, comprising a set of seven interrogatories, there is a N B—"Whole rupees and small bits of coin were scattered and given to the poor during the procession"

A number of questions start up at once out of this document, to which I have looked in vain for an adequate answer from the defendants' side The first question that arises is, 'Who supplied the story'?

POSSIBLE SOURCES OF THE STORY

Lindsay's memorandum of the 29th May, assuming it to be a correct record, could not possibly be the source, as this gives a very bald version compared with what is stated here, without any circumstantial details such as that the body had been placed on the funeral pyre and an empty pyre set on fire Nor could the story be derived from any report prevalent at the time at Jaidebpur in the plaintiff's camp There is in fact no evidence that any story, far less such a story, had been given out at Jaidebpur by or on behalf of the plaintiff,—the evidence on the defendants' side being just the other way, namely, that the plaintiff was refusing to disclose any facts regarding his past history The case put to Jyotirmoyee in cross-examination was that the plaintiff on being asked about his past history could give no answer, and that then when further questions were sought to be put, members of the family intervened saying, "He will not answer any questions now and will do so before higher authorities" (*Vol 8, p 363, ll 19-24*) The only story that had been current from almost immediately after the *Atma Panichaya* was that of poisoning which is confirmed by the defence evidence itself, but no mention is made of poisoning in the official version of the plaintiff's story, if one might so describe it

It will not do to suggest that a basis might have been supplied for the story by the rumour referred to in Rani Satyabhama's letter of the 3rd September, 1917, to the Maharajadhiraj of Burdwan, which as stated therein was to the effect that after the second Kumar's death his body was taken to a cave for performing funeral rites, but owing to a severe storm and heavy shower setting in at that time, the cremation party put fire to his mouth and left the body at that place without burning the same, that

then an ascetic came with his followers, took him away and made him alive (*Ex Z(33)*, Vol II, p 175, ll 26-31) The story and the rumour, it will be seen, do not entirely correspond the rumour suggests that the body was on the funeral pyre and "*mukhagni*" (literally, application of fire to the mouth) was performed when rain and storm came on, whereas the story is that storm and rain came on before the body was set on fire Again, according to the rumour, the man was dead and a sannyasi "made him alive", but according to the story the sannyasi, perceiving that life was not extinct, brought back the body to life by the application of some charm It is further to be observed that the rumour does not mention the hour of death as midnight Besides, there is nothing to connect the plaintiff with this rumour Moreover, on the defendants' own case as stated by D W 92 (*Vol 14*, p 131, l 37), it was a short-lived rumour and was killed as soon as Ram Satyabhama got the reply of the Maharajadhiraj of Burdwan, —a document which, it may be pointed out, had not been produced in the trial Court, but was marked as *Ex Z(33) (a)* in this Court by consent of parties

Another possible source of the story might be one or other of the pamphlets which had started appearing about this time, but the difficulty is, as Mr Chaudhuri frankly conceded, there is no evidence to connect the plaintiff with this mushroom crop of literature, and none of the statements in these pamphlets can, therefore, be used as admissions of the plaintiff It is further not known at what exact period these publications made their appearance, whether before or after the story of the sadhu was composed the pamphlet "*Fakir Beshe Piansi Raja*" is in fact said to have come out on the 12th June, 1921, that is to say, long after this date

From what source, then, could the story have emanated? The question is obviously one of great importance and must be faced by the defendants An integral part of the story was the alleged rainfall at Darjeeling on the night of the 8th May, 1909, and in the statement pointed attention was drawn to this as also to the fact that the rainfall report of the time showed that there had been no rain either on the 8th or on the 9th Lindsay's evidence shows that he also had this "rain story" before him at quite an early stage in one part of his cross-examination he says in fact that he had looked into the rainfall report in the Calcutta Gazette before he heard that Calvert had treated the Kumar at Darjeeling (*Vol 2*, p 147, ll 25-28), and on his own statement earlier in his evidence, it was from the "rain story" that he was convinced "from the first" that the plaintiff was not the Kumar (*ibid*, p 144, ll 24-25) It would not be unfair, therefore, to conclude that the story given to Lindsay and the story in the statement circulated with the questionnaire, when neither is traceable to the plaintiff or to anybody or anything on his side, must have had some other common origin What could it have been? If such a story did not come from the plaintiff or his camp, is it to be supposed that the defendants were taking such pains by lucky intuition to meet a case which was still in the air and for which they themselves could suggest no surer basis than a vague or shifty rumour in which they did not believe, or an extravagant allegation in a pamphlet which had probably yet to see the light of day? Or would it not be more reasonable to hold that there was a much deeper and more certain basis, a basis in human nature itself—in "conscience which makes cowards of us all"? To my mind, the suggestion of the rainfall story, first to Lindsay, and then in the statement purporting to give the story of the sadhu, is something more than a clever or accidental anticipation of a probable case it betrays a guilty mind which knew the facts as they had

happened, and had, therefore, a clearer perception of the case which would have to be encountered. And on the materials on the record, to none else could this be ascribed but to Satyendranath Banerjee. To this source, as it strikes me, must, therefore, be traced the whole of the move which was so ingeniously set on foot at this stage to forestall the plaintiff's case in anticipation.

ITS REAL OBJECT

This takes us to the other question, what was the real meaning and purpose of this remarkable document? Mr Chaudhuri stoutly repudiated the view expressed by the learned judge that it was meant for the information of the witnesses (*Vol 18, p 318, l 2*). But then the only other hypothesis must be that it was intended as a guide to the person who was to interrogate the witnesses, which means, in other words, that it was to be a basis of leading questions to be put to them, and not to elicit facts which the witnesses were in a position to state from their recollection unaided by informative suggestions. When the first batch of witnesses were examined at Darjeeling, Satyendranath Banerjee and Rai Bahadur Sasanka Coomar Ghose were both there. Is it to be supposed that being present on the spot they might be expected to have supplied all necessary instructions to the interrogating authority, but that in their absence a memorandum was considered both useful and necessary?

Reading the note about the story of the sadhu with the questionnaire, one cannot be left in any doubt as to the nature of the statements which the witnesses were expected to give. It is not difficult to see that the main anxiety on the defendants' side must have been to wipe out an evening cremation, for, if this was displaced, it would inevitably have negatived the whole of the plaintiff's case as far as it was possible to anticipate it at that stage. An evening procession would, of course, be automatically disproved, if death took place at midnight. That was in fact the hour already mentioned in Calvert's death certificate, and a confirmation of this from other sources would obviously be of great value. Midnight as the hour of death at a place like Darjeeling would also almost involuntarily lead the memory after a lapse of so many years to a cremation on the following morning, and this, again, would naturally be supposed to be a complete settler of the plaintiff's case at a time when it was not yet known that the plaintiff would admit a morning cremation. Then, if a few descriptive details were forthcoming to fix the identity of the body which was taken out for cremation as that of the second Kumar, it would doubtless advance the case still further, and would do so almost to the point of conviction, if these details happened to correspond to those mentioned in the insurance affidavits of cremation—"fair complexion", "stout built", "healthy-looking", "hair rather brownish" (*Ex 29, Vol I, p 182 and Ex 269, Vol I, p 188*). The absence of rain on the 8th or the 9th May, as proved by the "rainfall report of the time", would, of course, be an absolute clincher.

In my view it is impossible in these circumstances to miss the significance of this "story of the sadhu" which was thus circulated on purpose along with the questionnaire with the imprimatur of Rai Bahadur Sasanka Coomar Ghose.

R C DATTA'S QUESTIONNAIRE

A further set of questions, differing in some respects from this questionnaire, appears to have been framed later on by Romesh Chandra

Datta, D W 435, the Deputy Magistrate, who, as already stated, had started recording statements at Dacca under Lindsay's order on and from the 26th May, 1921. The witness cannot give the exact date on which he prepared these interrogatories, but says that to the best of his recollection he did so after he had already recorded a number of statements at a time when he had not been supplied with any questionnaire and when he could, therefore, only ask the witnesses to state what they knew. In framing these questions the witness admits he had consulted the Government Pleader Rai Bahadur Sasanka Coomar Ghose (*Vol 17, pp 411-413*). A list of the questions may be seen as an annexure to a letter from Lindsay to Lethbridge dated the 22nd June, 1921 (*Ex 445, Vol II, p 246*), and it would not be wholly unprofitable to compare them with the other set of questions.

FURTHER RECORDING OF STATEMENTS

(1) DR PRAN KRISHNA ACHARYYA

The process of obtaining statements of witnesses continued after this for quite a long time, and there can hardly be any doubt that the names were supplied mostly by Satyendranath Banerjee or Rai Bahadur Sasanka Coomar Ghose (*Vol 16, p 460, ll 25-30*). It is significant, however, that no statement was taken either from Satyendranath Banerjee, or so far as one can see, from Bibhabati Devi. There is one letter from Lindsay to Lethbridge dated the 10th June, 1921 which may be referred to in this connection (*Ex 439, Vol II, p 241*). Lindsay mentions in it the names of four persons including Dr Pran Krishna Acharyya, who were at Darjeeling at the time of the second Kumar's supposed death and living close to the Kumar's house "Step Aside", and he asks that the statements of these gentlemen may be recorded "about the events at the time of death and funeral procession of the second Kumar so far as they knew", and it is added that "they should be specially asked if there was any rain on the night of his death". Lethbridge thereupon makes a note that these persons should be asked to call at his office on Friday, the 17th June. A few days later, namely, on the 27th June following, Lindsay, however, informs Lethbridge that the Government Pleader has seen the gentlemen referred to in his D O of the 10th instant, and "so there is no necessity to trouble them further" (*Ex 440(a), Vol II, at p 248 top*). It would appear, therefore, that Rai Bahadur Sasanka Coomar Ghose had seen Dr Pran Krishna Acharyya. All the same, we find Lindsay addressing a questionnaire on the 13th August, 1921 direct to Dr Pran Krishna Acharyya who was then staying at Mussoori at the house of H H the Maharaja of Nabha (*Ex Z(335), Vol II, p 258*). Lindsay apparently did not venture to send him the "story of the sadhu", and his answers are naturally to the point, and not embellished with such details as are supposed to have been "volunteered" by witnesses who had, directly or indirectly, the benefit of the story, or who had been examined at Darjeeling during the stay of Satyendranath Banerjee and Rai Bahadur Sasanka Coomar Ghose. Dr Acharyya's answers will require special consideration later on in connection with the Darjeeling chapter, along with the evidence which he afterwards gave on commission on behalf of the plaintiff, the doctor being in fact the very first witness to be examined in the case. For the present, it is enough merely to add that Satyendranath Banerjee did not even know the name of Dr Acharyya at the time he was in Darjeeling in 1909 in fact he did not know any of his neighbours there (*Vol 16, p 479, l 28 and l 24*).

(2) CALVERT

Lindsay also appears to have sent a questionnaire to Calvert in England at a later stage, which Lindsay of course did not remember when he was asked about it. He did not remember either if he had got a reply from Calvert (*Vol 2, p 147, ll 23-24 and p 148, ll 31-34*). Lindsay's letter to Calvert is not forthcoming, but Calvert's reply which is dated the 3rd August, 1921 is now on record (*Ex Z(127), Vol II, p 350*). It is a document on which the plaintiff, as will be seen hereafter, places considerable reliance as lending support to an important part of his case touching the alleged death of the second Kumar. The plaintiff appears to have called for the correspondence by a petition filed in court on the 3rd August, 1931, before the commencement of the commission evidence in London (*Vol 2, pp 122-123*), and renewed his demand for its production during Calvert's cross-examination there, but the letter was not produced, learned counsel for the defendants stating, apparently on wrong instructions, that the document had never been called for (*ibid, p 208, ll 6-10*). Calvert admitted that he had asked for copy of the correspondence to be sent to him to refresh his memory, and a copy of this particular letter to Lindsay had in fact been shown to him a few weeks before his examination commenced, (*ibid, p 206, l 26—p 207, l 2, and p 207, ll 15-18*). Lindsay had likewise been shown a copy (*ibid, p 151, ll 26-27*). Even Satyendranath Banerjee had been told about the contents of this letter before the defendants' lawyers went to England, and he considered it to be an "important communication" (*Vol 16, p 493, ll 5-8*). All the same, the original document, as stated, was not forthcoming at this stage, and plaintiff's lawyer was obliged to cross-examine both the witnesses in London on the strength of a "brief" copy which was supplied to him by learned counsel for the defendants (*Vol 2, p 208, ll 11-12, and p 151, ll 26-27*). The plaintiff suggests, and not without reason, that the letter was deliberately suppressed during Calvert's examination-in-chief (*Vol 16, p 493, ll 12-14*). It was actually produced at a much later stage before a Commissioner through a formal witness Nalini Mohan Basu on the 14th October, 1932 (*Vol 2, p 489, ll 28-32*), and afterwards admitted in evidence on the 20th February, 1935. It is doubtful if the document would have ever seen the light of day, had it not been for a suggestion, unfounded as it was, made to Lindsay in cross-examination that there were certain significant words at the end of the letter which had been deleted in the copy shown to Calvert (*Vol 2, p 168, ll 1-21*). It is needless to add that in the interrogatories sent to Lindsay or to Calvert, the defendants had studiously omitted to give any indication of the existence of such a letter, though they had taken good care to acquaint the witnesses with the contents of the document before they came to give their evidence, and though it is worth while to mention there was a specific question for both witnesses regarding a letter of condolence which Calvert is supposed to have written to Bara Kumar on the 10th May, 1909 from Darjeeling (*Ex Z(205), Vol I, p 419*).

(3) HARAN CHANDRA CHAKRADAR

Another person who was approached by Lindsay for a statement about this time was one Haran Chandra Chakladar, a lecturer of the Calcutta University, who says that he was at Darjeeling in May 1909, staying at the Lewis Jubilee Sanitarium which was and is a well-known residential hotel at this hill-station largely patronised by Indians. He is an important witness on behalf of the defendants (*Vol 1, pp 376-400*), who is said to have accompanied the funeral procession from "Step Aside" to the cremation ground on the

morning of the 9th May and witnessed the actual cremation, recognising the face, as the body lay on the funeral pyre, to be that of the Kumar. He is also supposed to have been a speaker at a condolence meeting held in the Lewis Jubilee Sanitarium on the 16th May, 1909, in memory of the deceased Kumar, though it may be pointed out,—not that the fact is conclusive,—that he is not mentioned in a list which the defendants have filed giving the names of persons who attended the meeting (*Ex Z(118), Vol I, p 462*) Lindsay's evidence is that he had sent a questionnaire to Chakladar in the usual course in 1921, as he had done to other persons who were known to have been present in Darjeeling at the material time, but as Chakladar did not send an answer, he thought it fit to go down to Calcutta to interview him at his house and obtain his statement. The reason which prompted him to take this unusual step was that he thought that "Chakladar was a sort of person whose evidence would be believed throughout Bengal whatever he said" (*Vol 2, p 140, ll 17-21*) As to how Lindsay got the name of this witness or came to know so much about him at this stage, is a point which, like so many others in the case, the defendants have chosen to leave in complete obscurity. Satyendranath Banerjee had not even heard the name of Chakladar before the day Lindsay went down to take his statement, when "at Lindsay's request", he says, he accompanied him to Chakladar's house at Shahnagore in Kalighat, a suburb of Calcutta (*Vol 16, p 540, ll 13-14, l 19, and p 544, ll 22-27*) I may state at once I do not believe a word of this evidence which is only typical of the many palpable falsehoods which Satyendra has uttered in Court. Chakladar was asked why he had not given a statement to Lindsay before the interview, and his evidence on the point is directly contradictory to that of Lindsay. Chakladar said that nobody had asked him for any statement either personally or by letter, and there was, therefore, "no occasion of giving any statement before the interview" (*Vol 1, p 379, ll 6-7, and p 395, ll 29-33*) In his record of the interview, however, Lindsay states — "Professor Chakladar did not wish to be called in Court, so he had not given a written statement before" (*Ex Z (359), Vol II, p 266, ll 13-14*) Chakladar attempts to explain that all he did was to object to making a "formal" statement before Lindsay at the interview, as, to quote his own words, "he did not like then to be bound down by that statement" (*Vol 1, p 380, ll 18-19 and l 25*), but he is hardly supported by Lindsay who does not remember Chakladar having made any objection to him (*Vol 2, p 155, ll 26-27*) Lindsay admits that he did not record Chakladar's statement in his presence, but made the memorandum at the Grand Hotel, probably an hour or two after the interview, which was on the 16th September, 1921 (*ibid, p 155, ll 27-28, and p 199, ll 14-15*) It is not disputed that Satyendranath Banerjee was present at the interview, and his name is actually mentioned by Lindsay in the memorandum—though Lindsay was surprised to find his name in it when the document was shown to him in cross-examination (*ibid, p 155, ll 29-30*) The note in which this fact is recorded is rather significant — "Babu Satyendra Banerjee was with me when our talk took place, but he personally did not know the way to the house" (*Vol II, p 266, ll 14-16*) It is obvious that this little detail that Satyendra did not know the way to Chakladar's house must have been added at the instance of Satyendra himself, and it requires no acuteness to see the purpose behind it. Satyendra also in his evidence did not forget to stress the point. In cross-examination he stated that he did not direct Lindsay to Chakladar's house, he did not know the house (*Vol 16, p 540, ll 14-15*), but in re-examination, this is how he developed the story —

"I was first asked by Mr Lindsay if I knew one Haran Chakladar, a Professor, who lived in Shahnagore. At that time I had no idea of

Shahnagore, but said my driver might know it. He asked me if it would be possible for me to take him there. Then I and Mr Lindsay went together in the same car to Shahnagore, and by questioning people we came to the house of Mr Chakladar" (*ibid*, p 544, ll 22-27)

Chakladar's idea, however, was that Lindsay might have taken Satyendra with him to point out the house to him (*Vol* 1, p 381, ll 13-14)

Chakladar's statement as recorded by Lindsay and the evidence he subsequently gave on behalf of the defendants will all have to be considered fully hereafter. Suffice it to say here that I refuse to believe that Satyendranath Banerjee was as innocent in the matter of getting this statement from Chakladar as he pretends to be. I have no manner of doubt that he was the person who was instrumental in taking Lindsay to Chakladar's house, and his anxiety to deny this obvious fact, as shown not only in his evidence before the Court but in the note which he caused to be made in Lindsay's memorandum, carries its own significance. Satyendra says that it was "not by accident" that he happened to be present at the interview he had gone to see Lindsay at the Grand Hotel,—not, however, at Lindsay's request, as he is careful to add, but only to pay a ceremonial call, though "very likely" Lindsay did not know him before, and "very likely" that was the first time he met him (*Vol* 16, p 540, ll 12-13 and ll 22-25). One wonders, if Lindsay was a stranger to him or he a stranger to Lindsay, why he should keep himself so well informed about Lindsay's movements as not to miss the date of his arrival in Calcutta, or even the particular hotel where he would be putting up, though Calcutta, as Lindsay admits, was outside his jurisdiction (*Vol* 2, p 140, l 17). Lindsay, however, "thinks" that when he was in Calcutta to take Chakladar's statement, his wife had tea with Bibhabati Devi at Satyendranath Banerjee's house in Lansdowne Road (*ibid*, p 155, ll 4-7), a fact, which, if true, may be left to speak for itself. Satyendra admits that Lindsay and his wife once called at his house, but he does not of course remember in what connection Lindsay had come to Calcutta on that occasion (*Vol* 16, p 488, ll 22-24).

VISIT OF BAWA DHARAM DAS NAGA TO DACCA

Another interesting episode that happened in the course of the enquiry which was proceeding at this time may be now referred to. It relates to plaintiff's Guru Bawa Dharam Das, whose name was tattooed on the plaintiff's arm in an Urdu inscription reading "*Bawa Dharam Das da chela naga*", an inscription which Mr Chaudhuri would interpret as meaning "a chela (disciple) of Bawa Dharam Das and a Naga" (that is, a full-fledged sannyasi), but which, as the words stand, might well be taken to mean only "a *chela-naga* (that is, a novice-Naga) of Bawa Dharam Das", and this would in fact appear to be the meaning ascribed to it by one of defendants' own witnesses, D W 329, Iqbal Sing (*Vol* 16, p 98, ll 1-3, and p 101, ll 14-17), and so it is also understood by P W 939 Ram Ratan Chubba (*Vol* 10, p 375, ll 24-30 and p 377, ll 12-16).

It is admitted by the defendants, in fact it appears from their own documents, that this Guru did come to Dacca at the instance of the plaintiff on the 26th August, 1921. See Lindsay's letter of the 28th August, 1921, to French, the then Member of the Board of Revenue, in which he writes that "Dharam Das the Guru of the Bhowal sannyasi arrived in Dacca on Friday afternoon (26th August) and has been put up in great pomp by the party of Ananda Roy along with the sannyasi" (*Ex* Z(352), *Vol* II, p 341).

Lindsay adds, though on what basis, is not known, that "evidently he has been bought over by them, as this Guru is the same person as was examined by the police in the Punjab" The report of the Punjab enquiry, as stated before, had already arrived, and a copy of it had been forwarded by Needham to Lindsay, and then by Lindsay to the Board of Revenue, in the first week of July 1921 (*Ex 388, Vol II, p 332*) The investigating officers were said to have traced out Dharam Das at a village called Chhota Sansara, twenty miles from Amritsar, and got a statement from him recorded in the presence of an Honorary Magistrate named Lt S Raghubir Singh, identifying a photo supposed to be that of the plaintiff which was shown to him, as that of his chela Sunderdas (*Ex Z (228), Vol II, p 327*) On the 9th August following, Lindsay was actually writing to Emerson, Commissioner of the Dacca Division (*Ex 435, Vol II, p 336*), conveying a suggestion made to him by the Maharajadhiraj of Burdwan that endeavour should be made to bring Dharam Das to Dacca and thereby "expose" the plaintiff "in a way that would convince the general public", and asking for instructions from the Board of Revenue on the subject He stated that there was "of course a danger that the other party might get hold of the man and buy him over, as it would always be easy for him to deny the recognition of a photograph" The Board's reply was conveyed in a letter of the 18th August, 1921 to the Commissioner (*Ex Z(353), Vol II, p 339*), and was to the effect that it would be inadvisable to bring Dharma Das to Dacca until and unless the plaintiff instituted a suit in the civil court What led the Board of Revenue to form this opinion, notwithstanding that the Maharajadhiraj of Burdwan who was Member of the Governor's Executive Council having control over the Board, had advised to the contrary, it is difficult to conjecture, and it would not perhaps be right to think that it was due to a fear that the visit of the Guru, instead of exposing the plaintiff, might expose the character of the statement that had been obtained from him before Lt Raghubir Singh

This did not, however, deter Mr Chaudhuri from making the suggestion, without of course any evidence in support of it, that the report of the Punjab enquiry, which it is needless to add was a confidential proceeding, somehow came to be known to the plaintiff and his party, and that thereupon they contrived on a false pretext to bring down the Guru to Dacca in order to get him if they could to nullify the effect of his statement to the Police there It is a suggestion for which not only, as I have said, was there no foundation in the evidence, but which was not even put to the plaintiff or to any of his witnesses

In his examination-in-chief the plaintiff stated that his Guru came to Dacca and stayed with him at his house for 2 or 3 days and then left for fear of the police (*Vol 4, p 109, ll 3-6*) In cross-examination not a single question was put to him as to whether he had previously heard about the Punjab enquiry, or whether it was this or any other reason that led him to send for his Guru all that he was asked was if his Guru did or did not tell him at Dacca about having made a different statement in the Punjab regarding the plaintiff's identity, and his attention was specifically drawn to paragraph 23 of his memorial to the Board of Revenue (*Ex J, Vol III, p 92 at p 96*) This is what is stated in this paragraph —

"That when the announcement made by the Guru became known, someone connected with the enemies of your memorialist threatened the sadhu with criminal prosecution on the ground that he had given

a different story to some police officers in the Punjab as regards your memorialist's identity",

and it is added—

"An enquiry as to what led the sadhu to make such a statement would have shown the hands of the intriguers "

It is difficult to see how this may be taken as proving that the plaintiff had knowledge of this supposed statement of the Guru before the Guru arrived at Dacca, or that the Guru told the plaintiff about it at Dacca. All that is stated here is that the Guru was threatened with criminal prosecution by someone in the enemy's camp, and the ground on which he was so threatened was alleged to be that he had made a statement in the Punjab contrary to what he was now making in respect of the plaintiff's identity. If, as Mr Chaudhuri suggests, this account in the memorial is to be treated as an admission of the plaintiff, it must be taken as a whole and must involve an acceptance of the position which is clearly indicated that the Guru did recognise and acknowledge the plaintiff at Dacca, but this is a case directly contrary to Mr Chaudhuri's own case as made through a witness, to be referred to presently, D W 327, whom he sprang upon the Court at a later stage as the plaintiff's Guru. There is in my view no real contradiction between the statement in the memorial and the answer which the plaintiff gave to Mr Chaudhuri in the witness box that he did not know if Dharam Das had made a different statement to the police in the Punjab about his identity (*Vol 4, p 166, ll 1-21*)

Jyotirmoyee Devi's evidence may also be referred to. She says that she had sent out people to bring down Dharam Das, and that he came and stayed at her house, where plaintiff was also staying, but left after 3, 4 or 5 days for fear of the Magistrate and the Police. During his stay Dharam Das gave her an account of the plaintiff "from the beginning to the end, when they came in touch and when they parted" (*Vol 8, p 309, ll 16-23, and ll 29-37*). All that Mr Chaudhuri elicited in cross-examination was that she did not know what reasons Dharam Das had of being afraid of the police. She heard that he had received a letter from the Magistrate, though she could not say whether it came on the day after his arrival. She had no necessity to find if Dharam Das was a Behari or a Madrassi. Not a word was put to Jyotirmoyee Devi, any more than it had been put to the plaintiff, to ask if the witness had heard about the Punjab enquiry, much less about the result of it.

To none of the plaintiff's witnesses was it in fact suggested that Dharam Das had been brought down to Dacca on the false pretext of founding a "Math", which is the definite case which Mr Chaudhuri was instructed to make through the mouth of the witness, already referred to, D W 327, a man calling himself "Bawa Dharam Das", whom the defendants put into the box as the plaintiff's Guru (*Vol 16, p 52, ll 31-32*), but who, according to the plaintiff, and as found by the learned trial judge, was an impostor who had come to personate the Guru (*Vol 18, p 406, ll 10-11*).

Lindsay states in his evidence that he did send a letter to Dharam Das, and offered to go and see him anywhere in Dacca convenient to him, but never got a reply and never saw Dharam Das (*Vol 2, p 140, ll 22-30*). Writing to French on the 28th August, 1921 (*Ex Z(352), Vol II, p 341*), he says nothing about sending a letter, but states that he is "thinking" of going down to interview Dharam Das when Quarry returned from tour, as Quarry knew the up-country language better than he, Quarry being expected back the next day. On the 2nd September following, however, one finds him

writing to Lethbridge to say —“The Guru of *sannyasi* left after a stay of two days. He was too ill (! !) to come to see me. He has made no proper statement to anybody” (*Ex 441, Vol II, p 263, ll 1-2*). If, as was Mr Chaudhuri's case later through his witness Bawa Dharam Das, the Guru refused to make a false statement in favour of the plaintiff, because of his previous statement in the Punjab, one fails to see why he should have refused to see Lindsay or any one on the side of the defendants. It is not the statement of this witness, as elicited by Mr Chaudhuri, that after his refusal to oblige the plaintiff and his friends, any sort of pressure was put on him not to go to Lindsay, or they made it in any way impossible for him to see Lindsay. It is needless to add that such a suggestion had not been put by Mr Chaudhuri to the plaintiff or to Jyotirmoyee Devi or to any other witness on the plaintiff's side.

It beats me, therefore, how after this Mr Chaudhuri could solemnly invite the court to hold that the people who had taken the trouble to bring down Dharam Das to Dacca had to send him away, not because the local authorities made the place too hot for him, if one might say so, but because he refused to make a statement in support of their case contrary to his previous statement in the Punjab.

As to the value of that previous statement, it will appear fully from the judgment of the trial court where the Punjab enquiry is dealt with,—which is quite an interesting chapter by itself and throws a characteristic light on the conduct of the defendants in the case —

Mr Chaudhuri made a great point of the fact that Jyotirmoyee Devi did not even ascertain from the Guru whether he was a Behari or a Madras (*Vol 8, p 369, ll 32-33*), and characterised this statement which the witness made to him in cross-examination as a “most extraordinary falsehood”. But the fact remains, on defendants' own showing, that the real Guru did come to Dacca at this stage and put up at the house of the plaintiff and Jyotirmoyee Devi, and no purposeless lies need have been told to support the admitted fact.

INTRODUCTION OF A NEW GURU—AGHORI BABA

Mr Chaudhuri referred also to what he described as a “stranger development later on”, and it was this that when the plaintiff found that the Guru Dharam Das was no longer available as a witness on his side, another sadhu of the name of “Aghori Baba” was sought to be introduced shortly after in his place in the Defamation Case of Dr Ashutosh Das Gupta (already referred to) as the sadhu who is supposed to have rescued the plaintiff at Darjeeling and taken him away from there. It was said that the plaintiff stuck to this story of Aghori Baba rather than of Dharam Das in his memorial of the 8th December, 1926, to the Board of Revenue (*Ex J, Vol III, p 92*), and in this connection Mr Chaudhuri called attention to extracts from the depositions of two witnesses Jogesh Chandra Rai and Rabindranath Sanyal in the Defamation Case, which were annexed to that document (*ibid, pp 117-118*). Both these witnesses state that ten or twelve days after the 10th May, 1909, they saw the second Kumar of Bhowal in a *sannyasi's* garb and with head shaven, in a railway train leaving Darjeeling in the company of a *sannyasi* whom one of the witnesses, Jogesh Chandra Rai, knew and recognised as Aghori Baba. Referring to these statements, the plaintiff points out in paragraph 27 of the memorial what is a fact, namely, that these witnesses deposed on oath that they had seen the Kumar leaving Darjeeling by train with a *sannyasi* shortly after his alleged death.

Mr Chaudhuri contends, relying on what is stated in paragraph 30, that these depositions must be taken as admissions of the plaintiff, and refers to *Taylor on Evidence (11th Edition)*, Vol I, sec 763, in support of his contention. Apart from the question as to whether learned counsel is or is not correct in his proposition of law, it is enough to point out that in paragraph 23 of the same memorial the plaintiff has definitely given the name of his Guru Dharam Das Naga as the person who was brought to Dacca at the instance of his well-wishers. How after this it could be said that the plaintiff had jettisoned his Guru Dharam Das Naga and picked up a substitute in Aghori Baba, is more than I can understand. If the plaintiff was really making the story of Aghori Baba at that stage, because Dharam Das had failed him, how is it that he still clung to Dharam Das expressly in the body of the memorial, and later at the trial, though at the trial he must have realised he could not procure or produce this man to give evidence in his favour? Mr Chaudhuri's suggestion, if I may say so with respect, appears to me to be too absurd to be taken any serious notice of.

The fact remains, as I have said, that Dharam Das Naga, the real Guru of the plaintiff, was at Dacca in September, 1921, and it is a further fact appearing in defendants' own evidence that the plaintiff had almost from the very beginning since the day of "*Atma-parichaya*" been giving out the name of his Guru as Dharam Das and declaring that he would make a full disclosure when the Guru arrived. On Lindsay's own evidence, as already pointed out, the plaintiff had given the name of his Guru at the interview of the 29th May, 1921 (*Vol 2, p 140, ll 10-12, p 147, l 20*). As to why, when the Guru arrived, no public disclosure was or could be made by him regarding the plaintiff, the explanation has been given on behalf of the plaintiff, and there appears to be no reason for not accepting it as sufficient.

FURTHER ACTION BY LINDSAY

A passing reference may now be made to some further action which was taken by the authorities after the issue of Lindsay's "impostor notice" (*Ex 432, Vol II, p 277*). On the 28th May, 1921, as already stated, Lindsay had issued a warning notice to all officers of the Bhowal Court of Wards Estate not to acknowledge the *sadhu* as the second Kumar, or promote belief in his identity. On the 13th June, 1921, he issued a second notice in the following terms —

"The Board of Revenue has found that the sannyasi who says he is the second Kumar is an impostor. All the servants of the Bhowal Court of Wards are hereby informed that if they are found directly or indirectly espousing the cause of the sannyasi, they will be liable to summary dismissal" (*Ex 207, Vol II, p 278*).

This was followed by further orders and circulars issued by Lindsay or by other Court of Wards officials from time to time, threatening or directing action to be taken against persons who were supposed to be "acting against the Estate in the matter of the *sadhu*", to which it is not necessary to make a detailed reference.

It may be stated in passing that the Board of Revenue was reported about this time to be contemplating a change in the terms of the impostor notice by deleting the word "impostor" from it, and on the 2nd July, 1921, Needham was writing to Lindsay seriously to consider if any such action should be taken in view of the fact that the real identity of the *sadhu* was about to be ascertained as a result of the Punjab enquiry (*Ex 388, Vol II, p 332*). Apparently the proposal, if any, was thereupon dropped. On the 5th July, 1921, Lindsay in fact issued a circular order to Needham directing

that all officers of the Court of Wards were to be told that the rumour to the effect that the Hon'ble Board had withdrawn the word "impostor" from the notice was a lie (*Ex 218, Vol II, p 286*)

DOCUMENTS CALLED FOR BY BARA RANI

While the collection of statements from witnesses was proceeding, as already indicated, Lindsay took another step in the way of procuring contemporaneous documentary evidence which was expected to throw light on the question of the second Kumar's death. On the 27th October, 1921, he wrote to the Bara Rani Sarajubala Devi in Calcutta, calling for "the originals of all the letters and telegrams in connection with the illness, death and cremation of the late second Kumar of Bhowal, which had passed between her husband and the persons who had gone with the second Kumar to Darjeeling" (*Ex 55, Vol II, p 355*). Sarajubala has stated in her evidence that she thereupon sent all the papers to Lindsay after retaining copies thereof, and she filed all the copies she had before the Commissioner who took her evidence (*Vol 3, p 72, ll 5-10 and ll 32-33*). She admits that a telegram had come to her husband at the time from Darjeeling announcing the death of the second Kumar, but this telegram was not among the papers she filed.

TELEGRAM OF DEATH

There can be no question that this telegram was a material document, which, if produced, might have furnished almost conclusive proof of the hour of death—a crucial question in the case, as we shall see, but unfortunately it was not forthcoming, and there was serious controversy between the parties at the trial as to whether the document had been kept back by Sarajubala, or was being withheld by the defendants who had it in their custody. The learned trial judge, it may be stated, has definitely found in favour of the plaintiff on the point (*Vol 18, pp 357-359*), and it is just as well to state some of the relevant facts at this stage.

It appears that on the 5th December, 1916, Sarajubala who was then in Calcutta wrote to Needham (*Ex 370, Vol II, p 73*) that her husband's papers which were lying in a box or two in the Private Secretary's office at Jaidebpur might be sent to her, as they were required for the purposes of certain allocation proceedings which were then going on, these being proceedings which had been directed by the Board of Revenue to adjust accounts as between the three Ranis so as to debit to each the personal expenses of her husband (*See Vol 15, p 281, and judgment, Vol 18, p 268 top*). On receipt of this letter Needham asked the Private Secretary Jogendranath Banerjee to put up a list of the papers. On the 10th December following Jogendranath Banerjee wrote to Sarajubala, apologising for the delay in complying with her request and promising to send her as early as possible all the "letters and other things whatever" which were with him (*Ex 372, Vol II, p 174*). The documents were actually sent to her by Needham with a covering letter, dated the 18th April, 1917 (*Ex 65, Vol II, p 74*), in which he stated that he was keeping a list of the papers in his office and forwarding a copy of the list to her. It is admitted that all the letters and telegrams which Sarajubala sent to Lindsay in pursuance of his requisition of the 27th October, 1921, and copies of which she filed before the Commissioner, were among the papers she had thus received from Needham.

It is the plaintiff's case that the telegram of death had not come to Sarajubala with these papers. If, as the defendants suggest on the other

hand, it had, in fact, been sent to her at this time, it would doubtless have been included in the list which Needham retained. This list, the defendants did not produce in court. Sarajubala had, on the other hand, produced before the Commissioner her copy of the list as sent to her by Needham, and in reply to a challenge by Mr Chaudhuri in this court, this copy was readily produced for our inspection on behalf of the plaintiff. There is no mention of a telegram of death in the list. It would not be fair, however, to draw any inference adverse to the defendants from this fact, having regard to the incomplete specification given in the list which makes it difficult to trace out any particular documents mentioned therein.

What, then, do the probabilities suggest? Supposing Sarajubala had received the telegram from Needham in 1917, would there be any reason for her to suppress it from Lindsay when he asked for it? Sarajubala's evidence is that she became convinced of the plaintiff's identity as the second Kumar from the day she saw him at her house in Calcutta, which was somewhere in July or August, 1924, but the definite case which the defendants put to her was that up to 1335 B S or 1928, she had been consistently representing to the Board of Revenue that the second Kumar was dead and that it was in that year that her attitude changed for the first time (*Vol 3, p 83, ll 32-35 and p 90, ll 15-18*). Her attention was in fact specifically called to a number of letters she had written to the Board to that effect, ending with a letter of the 23rd July, 1928 (*Ex Z(305), Vol II, p 150*), (*Vol 3, p 90*). If, then, the defendants are right and Sarajubala was really treating the plaintiff as an impostor till 1928, it is difficult to see what motive she could have in 1921, for withholding from Lindsay this material evidence of the second Kumar's death.

There is another important point to be considered in this connection. Lindsay's requisition of the 27th October, 1921 (*Ex 55, Vol II, p 355*) shows that he wanted Sarajubala to send him *all* letters and telegrams in connection not merely with the second Kumar's "illness", but with his "death" and "cremation" as well. If, then, in sending him the papers, Sarajubala was purposely keeping back the intimation of death received from Darjeeling, is it likely that Lindsay would have kept quiet over the matter and not made a further enquiry about it from her, or is it not a more reasonable inference that the telegram of death was already in the Court of Wards office at Dacca and Lindsay was, therefore, quite satisfied with whatever papers he got from the lady? The fact that Lindsay did not make a further requisition for such a material document is significant, and can only mean either that it was already with him, or that he got it now from Sarajubala along with other papers and in either case, the document will have been shown to be in the possession of the defendants.

The plaintiff, in fact, elicited a very important admission in respect of the telegram of death from a witness on behalf of the defendants, Sarada Prosonna Ghose (*Vol 2, pp 272-293*), who was examined on commission in February, 1932. This gentleman was a Deputy Magistrate who had heard the Defamation Case in 1922, in which the question of the illness and alleged death of the second Kumar had been raised (*Vol 18, p 177*), and who was admittedly in charge of the Court of Wards department at Dacca from 1923 to 1925. As such, he says, he had gone through many confidential papers which confirmed him in his impression about the death of the second Kumar at Darjeeling (*Vol 2, p 281, ll 24-27*), and he specifically made a statement regarding the telegram of death in these terms —

"I as Wards Deputy Collector went through the telegram about the death of the second Kumar coming to the eldest Kumar from Darjeeling" (*Vol. 2, p 283, ll 34-35*)

This, if true, would conclusively show that the telegram was in the Court of Wards office at Dacca between 1923 and 1925, and all pretence that the document had been suppressed by Sarajubala must necessarily disappear. Mr Chaudhuri, however, made an ingenious attempt to get over the effect of this evidence. Sarada Prosonna Ghose had given his deposition in Bengali, and Mr Chaudhuri asked us to interpret his statement to mean merely that the witness had read about the fact of a telegram having come to Bara Kumar from Darjeeling announcing the death of the second Kumar, and not that he had read the telegram itself. I may give here the original words in Bengali in his deposition —

“দার্জিলিং থেকে বড় কুমারের কাছে যে মেজো কুমারের মৃত্যু সংবাদের telegram এসেছিল তাহা আমি as Wards Deputy Collector পড়েছিলাম।”

“Darjeeling theke bara Kumarer kachhe je mejokumarer mrityu sambader telegram esechhila taha ami as Wards Deputy Collector porechhilam”.

All that I can say is that, with all respect to Mr Chaudhuri, I am unable to accept this forced interpretation of his. To any Bengalee who reads these words as they stand, the only meaning they would convey is that the witness had read the telegram itself and not read about it. If any one speaking in Bengali wanted to say that he had merely “read” about the fact of receipt of a telegram, he would undoubtedly have expressed himself quite differently. The word “*taha*” in the answer given by the witness can refer only to the telegram he had specifically mentioned, namely, the telegram conveying the news of the Mejo Kumar’s death, and not to the fact that a telegram had arrived reporting the Mejo Kumar’s death. That this was the meaning which the witness wanted to convey would be at once apparent, if this answer is read with his previous statement at p 281, ll 24-25, Vol 2, and if it is further borne in mind that the defendants do not suggest that there were any confidential documents apart from the telegram itself from which the fact of such a telegram having come from Darjeeling would be apparent.

It appears that during the examination of DW 92, Phani Bhusan Banerjee, on the 24th June, 1935, learned counsel for the defendants said something in court with reference to the evidence of Sarada Prosonna Ghose on the point, which learned counsel for the plaintiff understood as amounting to a suggestion that the statement of the witness was an incorrect one. Two days later, on the 26th June, the plaintiff filed a petition in court putting on record the fact that the defendants had not at any previous stage questioned the correctness of Sarada Prosonna Ghose’s said evidence, which was stated to be to the effect that “*he had seen in the office during his service as Wards Deputy Collector, Dacca, the particular telegram sent to Jaidebpur from Darjeeling announcing the death of Mejo Kumar*” (Vol 14, p 231). The defendants filed a petition in answer which is on the next page, and it merely states that it had always been the defendants’ case that the telegram was never in their possession and power, but that all telegrams were in the possession and power of Sarajubala Devi ever since they had been sent to her by the Court of Wards after the death of Bara Kumar. There was no suggestion that the plaintiff’s reading of Sarada Prosonna Ghose’s evidence as very clearly set out in the plaintiff’s petition was not correct. From an order which the learned trial judge recorded in the matter on the 4th July, 1935 (Order No 1079, Vol 1, pp 80-82), it will also be seen that Mr Chaudhuri’s statement to court on the day the plaintiff’s petition was filed was merely that Sarada Prosonna Ghose’s evidence was

not correct, not that the evidence was to be construed in a sense different from what the plaintiff was suggesting. The learned judge further records in this order that he does not remember to have heard before that date the suggestion that Sarajubala Devi was keeping back the telegram, and notes in fact that Mr Chaudhuri stated that he was not in a position to make a definite statement of that kind. It is hardly necessary after this to labour the point any further, except to emphasize that Sarada Prosonna Ghose was not re-examined with reference to the answer he had given in cross-examination, as undoubtedly he would have been, if there was any real ambiguity in his statement as is now suggested.

On a consideration of all the materials on the record, it seems to me to be impossible, therefore, to come to any other conclusion on the subject than that of the learned trial judge, who had no doubt whatever that the telegram was in the possession of the defendants and had been purposely withheld by them (*Vol 18, pp 357-359*)

DIARY OF SATYENDRANATH BANERJEE

Before proceeding to a consideration of the Darjeeling evidence, it will perhaps be useful to call attention to an interesting document which came to be largely relied on by the plaintiff in connection not only with the Darjeeling chapter but with other parts of the case as well. It is really a defendants' document, but was produced by the plaintiff. The defendants could not, however, question its authenticity, all that they said was that it had been stolen from their custody. It is a diary of Satyendranath Banerjee for 1909, but admittedly kept for part of that year. There is no evidence or suggestion that he was in the habit of writing a diary in those days or that he ever wrote one in later years of his life, and it was for him, therefore, to explain the exceptional circumstances which led him to compose such a record for this period.

The diary which has been produced is not in a complete form. It commences from the 7th May 1909—the second day of the Kumar's illness at Darjeeling, and runs on to the 22nd November, not continuously, but with breaks. The entries in all the written pages of the book, except only three, were put to Satyendranath Banerjee in cross-examination and marked as exhibits on plaintiff's side (*Ex 399 series, Vol I, pp 306-384*). At the conclusion of Satyendra's evidence, it appears, learned counsel for the plaintiff produced and filed in court several more pages of the diary, numbering 42, of which only 3 were written and the rest blank, which he said were all that his client had in his possession. A list of the pages so filed will appear from a petition which was presented by the defendants on the following day, putting it on record that the plaintiff was purposely withholding the remaining pages which would have been material evidence in their favour, and asking that the written pages not yet exhibited (namely, those for the 18th, 19th and 28th October) might be marked as exhibits on admission. In a petition which the plaintiff filed in answer (*Vol 17, p 73*), the plaintiff stoutly denied having withheld a single sheet, and maintained, as his learned counsel had already informed the court from the beginning, that the diary had come into his possession only in a mutilated form.

A detailed examination of the various entries which are in evidence must be reserved for the present, but there are certain broad questions arising in connection with this document which may be touched upon here. The attitude which learned counsel for the defendants adopted in regard to it may be at once indicated. Mr Chaudhuri sought to rely on the diary as strong

corroborative evidence of the defendants' case regarding the second Kumar's death and cremation, seeing that the document was produced by the plaintiff, and further contended that he was entitled to ask the court to draw an adverse inference against the plaintiff from the non-production of the missing pages. He strongly repudiated the suggestion that the diary had been written with any ulterior object, or for any purpose other than Satyendra's private use, or that alternatively, Satyendra was deliberately making false entries therein. He maintained that the diary showed that Satyendra kept it for himself alone to protect his sister's interests and that it ceased as soon as this object was secured. According to his case, Satyendra started writing it on or about the 20th May, 1909 and put down from recollection the events of the preceding dates *de die in diem* as from the 7th May.

The first and foremost question obviously is as to the purpose for which the diary was written. That there was a purpose behind it, is not disputed by Satyendra himself. It is not his case that he was seized with a sudden fit of soliloquizing on paper for his own delectation. He has given an explanation, and it is important to see how far it carries conviction.

SATYENDRA'S EXPLANATION

The existence of such a diary appears to have been suggested for the first time to Bibhabati Devi in cross-examination on the 7th March, 1935, when she was asked if she could recognise her brother's handwriting and if she knew that he kept a diary (*Vol 12, p 228, ll 13-15, p 233, ll 31-39*), and the first entry, that of the 2nd October, 1909 (*marked Ex X(379) for identification, and later, as Ex 399(a), Vol I, p 361*), was put to her on the 11th March following. Satyendra, who came to give his evidence in December 1935, admitted in examination-in-chief that he kept a diary "for some matters in 1909", and gave the following reasons for his doing so. Within two or three days of his return to Jaidebpur from Darjeeling after the death of the second Kumar he came to hear of a deed of management propounded by Bara Kumar, the effect of which would have been to deprive his sister of her share of the inheritance. As neither he nor Bibhabati Devi had ever heard of such a document at any time during the second Kumar's life, this aroused his suspicion and he feared that there was a conspiracy on foot against his sister. He thereupon decided to "watch events", and he thought, "it would be better if I noted down the events as they happened from day to day as also my reflections from time to time". He actually set out writing the diary a day or two after the second Kumar's *sradh* which took place on the 18th May, 1909, that is to say, from about the 20th May, but he considered that "it would be better if he jotted down the happenings at Darjeeling as far as he remembered". He kept the diary till about the end of the year and discontinued it "when the deed of management was given a go-by and Bibhabati was restored to the full possession of her powers" (*Vol 16, p 437, l 34—p 438, l 10, and p 498, l 33—p 499, l 2*). Satyendra added that the diary had been stolen as well as his old letters and papers, and he suspected that they had been stolen by one Monmohan Bhattacharyya, an employee of his and an ex-employee of the Bhowal Estate (*ibid, p 438, ll 13-16*).

There is no suggestion on the plaintiff's side that this diary came into existence after his appearance as a sadhu in 1921. The trend of Satyendra's cross-examination would in fact negative such a suggestion (*ibid, p 543*). It may be taken, therefore, that it was more or less a contemporaneous record. Still the question remains how far it is possible to accept Satyendra's

explanation as to what led him to start such a record. It is worth while mentioning that in his opening before us Mr Chaudhuri made the case that Satyendra took this course on a lawyer's advice, and he gave the name of the lawyer as Mr Umakali Mukherjee, a senior Vakeel of the High Court, one of whose sons had married a sister of Bibhabati. Mr Chaudhuri's learned junior, however, frankly admitted to us afterwards that there was no evidence to support this. All that appeared was that Satyendra saw Mr Umakali Mukherjee in Calcutta on his return from Jaidebpur in connection with the deed of management (*ibid*, p 432, ll 39-40, and p 436, l 9).

If, as Satyendra says, it was the situation created by the deed of management which made him think of keeping a chronicle of events "as they happened from day to day", one is tempted to ask why in that case he should have ante-dated the record from even before the second Kumar's death, supposing of course the Kumar had died. According to his evidence he heard of the deed of management within two or three days of his arrival at Jaidebpur from Darjeeling, that is to say, about the 14th or 15th May, 1909 (*Vol 16*, p 498, ll 36-37), and yet strangely enough, when he actually sets out to write the diary about the 20th May, as he says, on going back to Jaidebpur from Calcutta, he does so retrospectively with effect from the 7th May. If it be supposed that he was minded to keep a complete record by including in it the events of the preceding days, one wonders why he should not then have begun it from the date of arrival of the second Kumar at Darjeeling, or at any rate, from the date of commencement of his illness. It may be noted that the pages of the diary from the 1st to the 6th May have been produced and are all blank. One wonders, again, even as regards the days for which Satyendra was "jotting down the happenings at Darjeeling as far he remembered", why his memory should not still have been fresh enough to add a few more details in the record. Quite significantly, as it appears, this beginner in diary-writing makes an abrupt start as from the 7th May, just the day before the Kumar's "death", and that with an entry of three short sentences—"Ramendra's illness continues, pain in stomach with slight fever. No sleep last night. Wired home for fruits, etc.", and then he begins the next day straightaway at midnight with the entry—"Kumar Ramendra expired midnight",—leaving the whole of the day a perfect blank.

"Satyendra was asked in cross-examination —

"Q May I take it that it was not necessary to record the details of second Kumar's illness or the hour of his death to enable your sister to escape the effect of deed of settlement?"

His answer was —

"A I merely recorded *facts*"—

—only that some of the "facts" he has now found it necessary to explain away (*Vol 16*, p 499, ll 4-7). Again —

"Q The part of the diary relating to Kumar's illness and death was written for no reason?"

A As the deed was promulgated very shortly after the death, I thought I would begin from the very beginning. It was not written to combat the rumour that the Kumar's body had not been burnt.

Q I challenge you to give any other reason?

A I merely recorded the facts—no other reason."

(*ibid*, p 499, ll 16-22)

Whether he was recording facts or not remains to be seen, but certainly the reason he gives for recording them, so far at any rate as they relate to the death and cremation of the second Kumar, does not stand a moment's scrutiny

The entries of the diary as exhibited go on from day to day from the 7th to the 12th May, and in none of them is a word to be found about a deed of management or about any action on the part of Bara Kumar threatening the interest of the second Ranı. The first reference to such a deed occurs in the entry next after the 12th May, marked *Ex 339(6)* (*Vol I, p 311*), which as printed in the paper-book appears to be under date May 29, but which is very probably an entry of a different date

The uncertainty as regards the date of this entry, it may be noted in passing, is due to the fact that the whole of the page containing the entry of this particular date is not forthcoming. Only a mutilated fragment was produced in court, with the top portion which would show the date torn off or cut out, as is pointed out by the learned trial judge in his order *No 1335, dated 19-12-35* (*Vol I, pp 99-100*). It appears that this mutilated page later came to be pasted on one of the blank pages to prevent its going astray, and this blank page happened to be that of the 29th May. It is quite apparent, therefore, that the entry cannot be of this date. Mr Chaudhuri points out that the internal evidence of the entry furnished by the reference therein to Bibhabati's condition (mental derangement and inability to recognise persons) suggests an earlier date, but even if this be supposed to be the case, it would still leave a good deal to explain

There are several other references in the diary to the deed of management, but it will be incorrect to state that it ceased as soon as the danger arising from this source was averted. The diary shows that what has been referred to as the deed of management was an agreement said to have been executed by and between the three Kumars regarding the management of the estate in the event of the death of any of them, which provided that in such a contingency the estate should be managed by the surviving brothers and the widow of the deceased should get only a maintenance allowance of Rs 12,000 per annum. Bara Kumar is reported to have told Satyendra that the deed could not be registered, as the "Collector's man" wanted a bribe of Rs 5,000, whereas he was prepared to offer Rs 500 only (*Vide entry dated 30th May, 1909, Ex 399(7), Vol I, p 312*). It is worthy of note that neither in this entry nor in the previous one where the deed of management is first referred to, is there a word of protest recorded by Satyendra. On the next day (31st May), Bara Kumar is stated to have been willing to "settle all affairs amicably", and he in fact asks Satyendra to let him know after consulting Chhota Kumar what sort of management Satyendra desired and also how much his sister wanted. As it would be difficult for his sister to manage the estate, Bara Kumar is said to have suggested that she should give them a power of attorney and they would pay her a settled sum every year. Satyendra made a counter-proposal that the two Kumars might take a putni settlement of his sister's share, and he writes that Bara Kumar was willing to accept the proposal. From this, Satyendra notes, it was apparent that the deed of agreement was not genuine (*Ex 399(8), ibid, p 313*). On the 20th June, Bara Kumar is supposed to have sent word to Satyendra that if he so wished, the deed of agreement might be cancelled and a fresh one entered into as might be dictated by him (*Ex 399(14), ibid, p 319*). On the 21st June Satyendra receives an assurance from the Commissioner that his sister's interests will be protected,

and the Commissioner offers to ask the Court of Wards to take over her estate, if nothing could be done to have it properly managed (*Ex 399(15)*, *ibid*, p 320) The next day Satyendra sees the Collector, and the Collector not only assures him that Government will give her a good and proper Manager, but tells him that he should see to his sister's interest, "even if he was insulted for his doing so" (*Ex 399(17)*, *ibid*, p 321) On the 27th June he hears that some signatures were secured from Bibhabati by Rai Bahadur Issur Ghose, the then Government Pleader of Dacca (*Ex 399(18)*, *ibid*, p 324) On the 23rd July Satyendra gets a report from one Juan Sanker Sen who was till recently Manager of the Estate that a document had been presented before Bibhabati by Chhota Kumar for signature, which she refused to sign (*Ex 399(62)*, *ibid*, p 332), but on the 8th August he records that the report was "bogus" (*Ex 399(22)*, *ibid*, p 337) On the 29th August there is an entry that the Kumars were trying to pledge the life-policy of the second Kumar to their aunt for Rs 30,000 to pay off a debt, to which Bibhabati objected, and the Kumars had to desist (*Ex 399(24)*, *ibid*, p 343)

It is not necessary to go into further details, but reading the diary as a whole, one may say that it does perhaps disclose an attempt on the part of Satyendra to resist a deed of management propounded by Bara Kumar at some stage, but if that was the explanation for writing it, it would not account for its being continued for months afterwards. In any event, as already indicated, it would not explain the *post facto* entries from the 7th to the 12th May, which are in fact the most material entries in the case. Satyendra alone could say what his real purpose was in writing the diary, but obviously he has not chosen to do so.

One significant fact is that Satyendra does not himself now stand by all that he has recorded in this document, and particularly as regards some of the "facts" he has noted in the earlier part of it with regard to the illness, death and cremation of the second Kumar and the events following immediately thereafter.

WAS HE LYING TO HIMSELF?

This takes us to the question which was pointedly posed by Mr Chaudhuri: was Satyendra lying to himself in the diary? The answer is furnished to some extent by Satyendra himself in the evidence he has given in the case. One of the contentions which Mr Chaudhuri strongly pressed before us, was that if and in so far as the entries corroborated the defendants' present story, they should be accepted as of the highest evidentiary value, but he omitted to say what would be the result where the diary differed from the version now given.

So far as the facts connected with the second Kumar's "death" and cremation are concerned, one sees the difficulty of suggesting that Satyendra was deliberately making false entries about them for the purpose of creating evidence in his own favour. In the first place, he could not use his own statements in favour of himself, and, secondly, he was himself mentioning the names of various persons in the diary who by their evidence could at once contradict his story. It seems to be more reasonable to hold that Satyendra was writing for himself, *but not altogether without an eye to the future*. Supposing he had any suspicion in his own mind regarding the fact of the second Kumar's death, he could not of course expect that his diary would be of any use to him in case the second Kumar turned up, for, obviously he could not be certain that the second Kumar would turn up only after all evidence to negative his story had ceased to be available. It would indeed

be going too far to say that Satyendra was seeking to provide against so remote a contingency. Nor do I think it would be right to accept the suggestion which was put to Satyendra in cross-examination that he was making these particular entries for the purpose of combating the rumour that the second Kumar's body had not been cremated. An attempt to create documentary evidence in this way against such rumours or reports would be equally futile or meaningless, for, anything he might choose to put down in his private record could not obviously prevail against living testimony which he must have known would be easily procurable to prove the contrary. It is not as if Satyendra got a friend to write a diary regarding the events of these days in the way he wanted them to be recorded, so that it might at any rate with some plausibility be produced as independent evidence, but here was Satyendra himself acting as his own chronicler, who *ex hypothesi* was seeking to hide his own delinquencies. In so far, therefore, as it is suggested that in making this record Satyendra was manufacturing evidence in anticipation, I think the theory must be discarded. All the same, his action need not have been wholly purposeless. He might still be casting his eyes far ahead of the immediate present. It might well be that his object was no more than keeping a memorandum for his own use of the story he should make and have to adhere to in future, in case any questions came to be raised at any stage hereafter regarding events which he would inevitably be called upon to explain. One does not always go out of one's way to keep notes about a true story, but if a person is minded to make a false case or finds it to his interest to do so, it is often safer to reduce it to writing. The written record helps to preserve the fleeting lineaments of an imaginary picture from the constant risk of distortion through the shifting mists of human memory. All this, it may be said, is mere speculation, but what else is left when the only person who could give the real answer to the question before the court does not give it?

Satyendra was no doubt deprived of the assistance he expected to derive from the memorandum he drew up, but this was due to an accident which he could not anticipate. The result of it, of course, was that he found himself under the necessity of having to explain away many things in the course of his evidence when confronted with his own writing by the opposite party.

I find it difficult to accept the suggestion which seems to have been made by Satyendra in one part of his cross-examination that he was recording the events connected with death and cremation merely for the sake of recording them (*Vol 16, p 499, l 7 and l 22*). Such a view is in fact ruled out at once by the character of the entries themselves. No details of the illness are given. 'biliary colic' of which so much is heard later in the evidence is not even hinted at. The date when the illness commenced is not mentioned and the first entry starts all at once with the statement "Ramendra's illness continues", and what is more significant, the next day's entry, as already pointed out, begins with "midnight", the supposed hour of death. One cannot help feeling that so far at any rate as these entries of the 7th, 8th and 9th May are concerned, the object was not so much to make a fair record of the days' happenings, but only to make a note of such facts as were considered important, the most important among them being obviously death at midnight, and facts which might be expected to confirm it.

DIARY ENTRIES—HOW FAR EVIDENCE FOR OR AGAINST THE PLAINTIFF

The next question which arises is as to what use the plaintiff is entitled to make of the entries in the diary. Mr Chaudhuri made the point in his

reply that these were in the nature of 'admissions', and as such, it was not open to the plaintiff to "divide" them and pick out only the items which went against the defendants. The plaintiff, it was argued, was bound to take the document as a whole, and if that was done, it was the most damaging piece of evidence against his case that could be produced. Mr Chaudhuri referred to *Phyphson on Evidence* (7th Edition, p 275) in support of his contention. The answer is two-fold. In the first place, the entries are not admissions at all within the meaning of the Indian Evidence Act, ss. 18, 19 and 20. Secondly, it is well-established that distinct matters, not necessary to explain or complete an admission, although contained in the same document or statement, are not evidence in favour of the party making the admission. It is no doubt the rule that where an admission is qualified in its terms, it must ordinarily be accepted as a whole, or not taken at all as evidence against a party, but when a party makes separate and distinct allegations without any qualification, this rule does not apply. It will be seen that the particular items from the diary which were put to Satyendra and are sought to be used against the defendants were quite distinct and independent matters, not inter-related to other parts of the entries. In point of fact, the plaintiff appears to have used the diary for a double purpose, partly to contradict the witness in respect of certain matters by the writing, and partly to prove facts therein stated by admission, which undoubtedly he was entitled to do under the law.

So far as the defendants are concerned, it is difficult to see how, treating the entries as admissions, the defendants could use them in their favour. It does not also appear to be clear how far the defendants are entitled to rely on these statements as corroboration of Satyendra's testimony under s 157 of the Indian Evidence Act, seeing that they did not offer to prove them themselves, either by the production of the statements, or by giving secondary evidence of their contents on establishing their right to do so. It is not necessary, however, to discuss the point, for, even if the entries in the diary could be legitimately used for such a purpose, though proved by the other side, their corroborative value would doubtless depend upon the facts and circumstances connected therewith.

MISSING PAGES

Turning now to Mr Chaudhuri's charge regarding the missing pages of the diary, what he said was that the plaintiff had the whole book in his possession, but produced only a number of loose sheets from it, deliberately keeping back the pages which, if produced, would have gone against him. There is no direct evidence on the defendants' side that the whole of the diary was in the plaintiff's custody, but they maintain that this was admitted by Mr B C Chatterjee, counsel for the plaintiff, as early as the 11th March, 1935, when the first entry was shown to Bibhabati Devi in cross-examination, and it is further said that Mr Chatterjee offered at this stage to produce the whole book later on. The defendants made this categorical assertion in the petition, already referred to, which they filed on the 20th December, 1935 (*Vol 16, p 549*), the day after Mr Chatterjee filed in court the unexhibited pages of the diary with the statement, as he says, that these were all that his client had in his possession. The plaintiff emphatically denied having ever made a different statement through his learned counsel, or offered to produce the entire book as alleged, and made his position clear in his petition of the 6th January, 1936 (*Vol 17, p 73*), to which also reference has

been made. The defendants returned to the charge in a further petition by way of rejoinder on the 8th January following, and their whole case regarding the missing pages is fully set out therein (*ibid*, p 90). This does not, however, carry the matter beyond the statement of learned counsel on one side contradicted by that of learned counsel on the other.

The fact remains that the diary in a fragmentary condition was produced from the plaintiff's custody, not through a witness, but by his learned counsel, and it is also a fact that this was not a document of the plaintiff Satyendra who alleged that the diary had been stolen by Monmohan Bhattacharyya. Stated in re-examination that he had seen it last at Dacca about a fortnight before the Court of Wards took over charge of the Estate, which was in the year 1911, and it was then a bound book and intact, with no pages torn (*Vol 16, p 544, ll 29-32*). The plaintiff, as stated, has given no evidence on his side to show how he came by the diary or in what condition it came into his hands.

PRESUMPTIONS ARISING THEREFROM

In this state of things the court may only draw a presumption as to the facts under s 114 of the Indian Evidence Act. But supposing the presumption is in favour of the defendants, can it go beyond this that the plaintiff had the entire diary in his possession? This, however, will not be sufficient for their purposes. There will have to be a further presumption in the defendants' favour that the pages which were with the plaintiff, but not produced by him, were written in and not blank sheets. But are there enough materials before the court to justify its going so far?

The plaintiff has undoubtedly this fact in his favour that the diary did contain a large number of blank pages, and there is little or nothing to contradict this on the other side. Satyendra was not asked, as he might have been, if he had written the diary continuously from day to day, and he did not say that he had done so.

Apart from the entries actually exhibited, Satyendra mentioned to his counsel in re-examination only one specific item which was entered in his diary, namely, the date of his arrival at Jaidebpur after the second Kumar's *sradh* (*Vol 16, p 544, ll 32-33*). He coupled it with a further statement that "except for the Darjeeling incidents, other incidents were recorded from the time he returned to Jaidebpur after the Kumar's death" (*ibid, p 544, ll 39-41*). But this is expressed in much too vague and general terms to override the undisputed existence of blank pages in the diary. The utmost that I think can be said in favour of the defendants is that the court ought to presume the existence of the particular entry spoken to by Satyendra, but it will not be right to draw a general presumption in their favour that other material facts must also have been similarly entered.

STORY OF KUSHAPUTTALIKA

In their petition of the 8th January, 1936 (*supra*) the defendants themselves specifically mentioned certain matters in respect of which they stated that the missing pages, if produced, would have exposed the "mass of false evidence" adduced on behalf of the plaintiff. These matters were said to relate to the plaintiff's story of an alleged proposal of '*kusha-puttalika*' at Jaidebpur, Satyendranath Banerjee's supposed presence at the second Kumar's *sradh*, the date of his leaving Jaidebpur for Calcutta after his return from Darjeeling and the date of his coming to know of the

deed of management Although the items were thus separately set out, they all hinged upon one central fact, the date of Satyendra's return to Jaidebpur from Calcutta, whether it was before or after the second Kumar's *śradh*, which it is known took place on the 18th May, 1909

As will be seen, the plaintiff's case is that before the *śradh* a rumour arose at Jaidebpur that the second Kumar's body had not been cremated and that this led to a discussion as to whether the *śradh* could be held without there first of all being a ceremony known as *kushaputtalika*. This consists in the burning of an effigy made of *kusha* grass, and is a ritual enjoined by the Hindu shastras to be performed when the dead body of a man who is taken to be dead cannot be found or when the body has for some reason or other not been cremated (See P W 1022, Vol 12, pp 14-15). Some of the plaintiff's witnesses, it appears, stated that the proposal of *kushaputtalika* had been mooted two or three days prior to the *śradh*, but that it was afterwards dropped, as Satyendra returned to Jaidebpur from Calcutta before the *śradh* and assured Bara Kumar that he had himself cremated the second Kumar. See, for instance, the evidence of Akhil Chandra Pakrashī, P W 37 (Vol 4, p 328, ll 33-40) incidentally, it may be mentioned this witness was not cross-examined on this point. To the same effect is the testimony of Hari Charan Kritiratna, P W 87 (Vol 5, p 15, ll 34-39), Lal Mohan Goswami, P W 852 (Vol 9, p 480, ll. 32-36, and cross-examination, p 493, ll 30-34), and Satī Nath Banerjee, alias Sagar, P W 977 (Vol 11, p 183, ll 12-23 and cross-examination, p 205, ll 33-36). Jyotirmoyee Dēvi, P W 660, also states that Satyendra returned to Jaidebpur a day or two before the *śradh*, and that though there was a previous talk of *kushaputtalika*, it was not held (Vol 8, p 289, ll 8-9 and 15-16), she does not say, however, whether it was at the instance of Satyendra that the proposal was abandoned.

Satyendra in his evidence totally denied the story of *kushaputtalika*, and stated that it was wholly untrue that he had said anything to Bara Kumar in consequence of which such a proposal was dropped, and in support of his statement he asserted that he was not present at Jaidebpur on the day of the *śradh* or even a day or two before it took place, that he was away in Calcutta at the time, and that he returned to Jaidebpur either on the day following the *śradh* or the day after (Vol 16, p 433, ll 10-13).

Apparently the defendants considered the date of Satyendra's return to Jaidebpur to be very material for the purpose of combating the story of *kushaputtalika*, and it was from this point of view that they made such a grievance of the non-production of the whole diary which they say would have at once disclosed the dates of Satyendra's movements between Jaidebpur and Calcutta about this time.

It is obvious, however, that such a grievance could be made, if at all, only in regard to the pages between the 13th and the 20th May, 1909, and that, too, because of Satyendra's specific statement referred to above that the date of his arrival at Jaidebpur after the second Kumar's *śradh* had been entered in the diary. But whether even this would have been legitimate or not in the lower court, seeing that there was no cross-examination of Satyendra on his statement about having returned to Jaidebpur after the *śradh*, there can in my opinion be no possible room for any grievance now on this score, inasmuch as the learned judge has definitely accepted the defendants' case that Satyendra was not present at the *śradh* at all, having left Jaidebpur about the 16th May (Vol 18, p 50, ll 27-28). The defendants

surely could not expect a more favourable finding as the result of production of any of the missing pages of the diary

Whether the absence of Satyendra from the *śradh* affects the story of *kushaputtalika* or not, is quite another matter, which the learned trial judge has dealt with in his own way (*Vol 18, pp 50-51*), but the production or non-production of the whole diary can have nothing to do with it

PROCURING OF INSURANCE AFFIDAVITS

In this court Mr Chaudhuri referred to another specific matter on which he said the court ought also to draw a presumption against the plaintiff from the non-production of the whole diary, namely, as regards the case which was put to Satyendra in cross-examination and which he denied (*Vol 16, p 541, ll 19-20*), that he had sent a man to Darjeeling in July 1909 to procure the certificate of death of the second Kumar from Calvert which was dated the 7th of that month (*Ex Z(111), Vol I, p 178*) I am not at all satisfied that this is a position open to Mr Chaudhuri to take up in this court. In the first place, no proper foundation was laid in the evidence for such a presumption. Satyendra did not say if he had made any entry or what entry he had made in his diary regarding this particular matter and I do not think it can be taken to have been sufficiently indicated by the general statement he made about "other incidents" (*Vol 16, p 544, l 40*). This was certainly not even hinted at in the defendants' petition of the 8th January, 1936 (*Vol 17, p 90*). Secondly, the evidence of the diary, even if forthcoming, could only have been of a negative character on the question as to whether Satyendra had sent a man to Darjeeling: how could this be either a contradiction of the plaintiff's case or corroboration of that of the defendants? Supposing by parity of reasoning the plaintiff were to argue, with reference to the pages of the 7th, 8th and 9th May, that a presumption should be drawn against the defendants in respect of the happenings of these dates not actually recorded, would Mr Chaudhuri be prepared to face the position?

One really wonders why Mr Chaudhuri should be so anxious to rely on presumptions for the purpose of demolishing the plaintiff's case regarding matters on which it should have been possible for his clients to adduce positive evidence of a convincing character. Take this very question of procuring Calvert's death certificate. The plaintiff by his cross-examination of Satyendra, not to speak of positive evidence on his side,—(*see for instance, P W 952, Vol 10, p 455, ll 35-39*),—left the defendants in no doubt as to the case he was making, namely, that it was Satyendra who had arranged the whole of this business (*Vol 16, p 541, ll 19-20*). Satyendra's evidence was that he had not gone to Darjeeling to secure this or any of the other certificates of death and cremation which were required by the insurance company, viz., those of Siddheswar De (*Ex 29, Vol I, p 182*) and of Sashu Bhusan Banerjee and Satya Prosad Ghosal (*Ex Z(202), Vol I, p 183*), but that these certificates or "insurance affidavits", as they have been called, were obtained by the then Manager of the estate Jnan Sanker Sen by correspondence with one Rai Bahadur Hari Mohan Chandra who had settled in Darjeeling after retirement (*Vol 16, p 433, ll 23-32 and p 541 ll 19-20*). In support of this case the defendants produced a letter from Calvert to this Rai Bahadur dated the 7th July, 1900, forwarding the death certificate of the second Kumar, which he says Dr Pal had asked him to send, and asking that his fees might be paid (*Ex Z(120) (a), Vol I, p 180*).—Dr Pal referred to here being Dr Sisir Kumar Pal who was and still is

Superintendent of the Lewis Jubilee Sanitarium (*Vol 2, p 493, ll 14-15*). On the back of the letter is an endorsement showing that Rai Bahadur Hari Mohan Chandra sent Rs 32 to Calvert as his fee

Plainly, this letter is wholly inconclusive on the crucial question as to at whose instance Rai Bahadur Hari Mohan Chandra had moved in the matter. It is difficult to accept Satyendra's statement that it was at the instance of Jnan Sanker Sen. As the learned judge points out (*Vol 18, p 53, ll 32-35*), Jnan Sanker Sen had virtually ceased to be the Manager in June 1909, if not earlier. Apart from evidence adduced by the plaintiff, there is Satyendra's own entry in his diary under date 29th June (*Ex 399(59), Vol I, p 326*) — "Manager Sen to 'Jdpore' (obviously, a misprint for 'retire') I hear from to-morrow", as well as an earlier entry of the 22nd June (*Ex 399(17), ibid, p 321, ll 10-11*) in which he writes that the Collector said, "Sen must go, as his resignation has been accepted". There is a further entry on the 11th July that Sen's brother is asking Satyendra to "speak to the Kumars if they can let him off quietly" (*Ex 399(60), ibid, p 329*).

If, as Satyendra says, there was correspondence between the Manager of the estate and Rai Bahadur Hari Mohan Chandra, it was evidence within the defendants' possession and power and might have been easily produced, and this would certainly have been a more satisfactory course for proving a fact within their special knowledge than asking the court to draw inferences regarding the contents of missing pages of Satyendra's diary.

It appears that Rai Bahadur Hari Mohan Chandra had started a special file at the Lewis Jubilee Sanitarium called the "Bhowal Kumar's Condolence Meeting file", out of which the defendants produced the letter from Calvert to the Rai Bahadur referred to above and several other documents through a witness Nalini Mohan Basu, Assistant Medical Officer of the Sanitarium (*Vol 2, pp 486-498*). It is only reasonable to suppose that if there was a letter to the Rai Bahadur requesting him to procure the death certificates, it should have been on the Condolence file, but the defendants caused to be produced only 35 sheets from this file which was collectively marked "M" for identification (*ibid, p 495, ll 21-25*), the witness stating quite definitely in cross-examination—"There are certainly more papers in the said file than the papers marked "M", as the file is not complete with the papers marked "M" (*ibid, p 496, ll 12-13*). The defendants also made no attempt to prove that any such correspondence as was referred to by Satyendra could not be traced among the papers in the Bhowal Estate Office at Jaidebpur or Dacca. Neither, it may be added, did they call Dr Sisir Kumar Pal, Superintendent of the Sanitarium, who was still alive and might doubtless have thrown some light on the matter. After this, one is not much impressed by a complaint coming from Mr Chandhuri's clients regarding the non-production of any pages of Satyendra's diary.

ALLEGED PROMISE OF DONATION AT DARJEELING BY SATYENDRA

While on this subject, it is not out of place to mention that it was the plaintiff's case that before leaving Darjeeling after the second Kumar's supposed death, Satyendra held out to Rai Bahadur Hari Mohan Chandra a hope that he might expect from Bibhabati Devi a donation of Rs 30,000/- for the Lewis Jubilee Sanitarium, this being the sum for which the Kumar's life had been insured, and that it was by this clever move that Satyendra managed to bespeak the active interest of the Rai Bahadur in his behalf. The Rai Bahadur was a retired member of the Provincial Executive Service

near future",—though, as he admits, Mr Banerjee knew his and his sister's address (*Vol 16, p 522, ll 29-33*)

With all this and other evidence on various points staring them in the face, I cannot help remarking that Mr Chaudhuri's clients would have assisted the court better by disclosing all the contemporaneous records which were in their possession or power than by trying to build a grievance on the plaintiff's supposed suppression of a few pages of Satyendra's diary which have certainly not been proved to have been in his possession

NO MOTIVE FOR PLAINTIFF'S SUPPRESSION OF MISSING PAGES

As for this charge of suppression, there is just one other remark I should like to make. There was no more telling fact for the plaintiff to keep back than that of death at midnight, and yet he does not suppress the page recording "Kumar Ramendra expired midnight", but secretes only such pages as might either show that on one particular date Satyendra was in Calcutta and not at Jaidebpur, or perhaps omit to show that on another date he was corresponding with Rai Bahadur Hari Mohan Chandra! Speaking for myself, I feel bound to say that the impression which the proceedings in the case have left on my mind is that the plaintiff has not only made a full disclosure of his documents, but been ready and anxious to face all documents coming from the opposite side, whereas it is the defendants who have demonstrably failed to come up to that standard of straight dealing. It is necessary only to refer to some of the petitions filed by the plaintiff calling for official documents, such as those of the 17th March, 1932 (*Vol 2, p 350*) and the 6th September, 1934 (*Vol 10, p 101 and p 104*), and to the grounds which were put forward on the other side for withholding many of them.

It remains to add a few words regarding the alleged theft of Satyendra's diary by Monmohan Bhattacharyya. There is nothing on the defendants' side to show when the theft took place, but Mr Chaudhuri stated to us that it must have been somewhere about May or June, 1921. Satyendra's statement is, as already pointed out, that he saw his diary last at Dacca in 1911, and according to him it was among the papers which he had left at his rented Nalgola house there and which were subsequently stolen (*Vol 16, p 525, ll 34-35*). In their petition of the 8th January, 1936 (*Vol 17, p 90*) which has been referred to above, the defendants made the definite suggestion that the diary must have come into the plaintiff's hands at least as early as December, 1921 when Dr Ashutosh Das Gupta was cross-examined in the Defamation Case. The ground which was put forward in support of this suggestion was briefly that certain dates regarding the movements of Satyendra about the time of the second Kumar's *siadh* were put to the witness on behalf of the defence, and as these dates would be found in the diary, the inference was drawn that the diary must have been in their possession. As the defence in that case was admittedly helped by the present plaintiff, the further inference seemed to be irresistible that the diary must have been in the hands of the present plaintiff as well. Whether this chain of deductions supports the conclusion drawn or not, it seems to be obvious that if the defendants are right in their suggestion, they on their part must also have known as early as December, 1921 that the diary was in the plaintiff's custody. Yet it is not understood why no steps were taken by them to compel disclosure of the document by the plaintiff, or why not even a word about the alleged theft was put to the plaintiff or to the supposed thief himself who gave evidence on his behalf in October-November, 1934 (*P IV 952, Vol 10, p 448*).

It is undoubtedly a feature of this case that many of the documents of the defendants got into the hands of the plaintiff. The plaintiff has not chosen to give any evidence as to how he got them, but assuming that he obtained some of them by means which were not fair, that might perhaps excite justifiable moral indignation, but it leaves the authenticity of the documents wholly unaffected, when the defendants on being confronted with them could not possibly deny the genuineness of their contents. Strictly speaking, it should have been for the defendants to disclose these documents of their own accord without having to be forced to admit them under pressure. It is remarkable that though the defendants are making such a grievance against the plaintiff for having secured surreptitious copies of official documents, not a single question was put to him about it while he was in the box, nor a suggestion made to any of his witnesses that having somehow or other got the copies, the plaintiff was shaping his case accordingly. The complaint is really on the plaintiff's side that the defendants' case did not correspond to the official records.

DARJEELING CHAPTER

Having sufficiently cleared the ground, I pass on now to the Darjeeling chapter proper. The two outstanding questions to be considered in connection with it are whether or not the second Kumar died, and whether or not his body was cremated. Leading up to and bearing on these, are a number of other questions, each an important topic by itself and more or less related to the others. On all of these points it is remarkable the parties are divided in their respective cases. The plaintiff says that the Kumar did not die and he was not cremated, whereas the defendants maintain that death as well as cremation was an undoubted fact. The subsidiary topics may be broadly indicated —

- (a) Nature and course of the second Kumar's illness,
- (b) Cause of his death or apparent death,
- (c) Hour of alleged death,
- (d) Alleged cremation procession in the evening,
- (e) Alleged rain and storm on the night of 8th May,
- (f) The morning procession,
- (g) Alleged rescue by sadhus

Putting aside the question of rescue as a distinct topic, the other items may be treated in the order stated, but in dealing with these it will be impossible to avoid some amount of overlapping.

As direct evidence of death, it may be stated, the defendants rely strongly on a number of documents, all referred to already, namely,—

- (1) Calvert's letter of condolence to Bara Kumar written on the 10th May, 1909 (*Ex Z(205), Vol I, p 419*),
- (2) Calvert's death certificate of the 7th July, 1909 (*Ex Z(111), Vol I, p 178*),
- (3) Other insurance affidavits (*Ex Z(202), Vol I, p 183, Ex Z(113), ibid, p 187*),
- (4) Entries in Satyendra's diary, particularly of the 8th May, 1909 (*Ex 399 (1), Vol I, p 306*)

There is one document, Calvert's letter to Lindsay of the 3rd August, 1921 (*Ex Z(127)*, *Vol II*, p 350), which Mr Chaudhuri would be only too glad to avoid so also one of the affidavits of death (*Ex 29*, *Vol I*, p 182), which had to be tendered by the plaintiff and then admitted by the defendants

Apart from this, there is on the defendants' side a mass of oral evidence consisting of the testimony of Satyendra (*Vol 16*, pp 423-545) and Bibhabati Devi (*Vol 12*, pp 196-315), besides that of several other members of the Darjeeling party who had accompanied the Kumar, such as Birendra Chandra Banerjee (*Vol 15*, pp 314-377) and Bepin Behari De (Bepin Khansama) (*Vol 14*, pp 487-505), and of a nurse named Jagat Mohini (*Vol 1*, pp 281-299), as also that of Calvert himself (*Vol 2*, pp 201-224), in addition to which body of evidence there is the further testimony of witnesses of the morning cremation who speak to having seen and recognised the body which was cremated as that of the second Kumar. There is one witness of theirs, however, on whose evidence the defendants positively do *not* rely, and he is Dr Ashutosh Das Gupta (*Vol 16*, pp 240-346), the family physician who had gone to Darjeeling with the Kumar, and on their own showing, attended him throughout his illness there, learned counsel for the defendants himself describing the evidence as "one mass of contradiction and confusion". Another such witness, also a member of the Darjeeling party, on whom, to a little less extent, Mr Chaudhuri does not rely, is Anthony Morel (*Vol 2*, pp 367-431)

RESPECTIVE CASES AS MADE IN THE PLEADINGS

Before proceeding further it may be useful to state shortly the case made in the pleadings regarding illness, death and cremation. The plaintiff's case is summarised in paragraph 2 of the plaint (*Vol 1*, pp 119-168), where, after stating that in April, 1909 he went to Darjeeling for a change accompanied by his wife Bibhabati Devi and some other relations and officers, he avers that during his stay there he fell ill, and "while he lay unconscious by the administration of poison in the course of his treatment", he was taken for dead and carried to the *sasan* on the night of the 8th May, 1909. After the body reached the *sasan*, there was severe storm and rain and the persons who carried the body left it there, and took shelter elsewhere. On their return they missed the body and went away. A few days after, the plaintiff on regaining consciousness found himself amongst *Naga samnyasis* (nude mendicants), and having recovered under their nursing, he began to live with them. At that time as the result of the administering of poison, his memory of the past was almost effaced.

In the joint written statement filed on behalf of Bibhabati Devi and the adopted son Ram Narayan Roy (*Vol 1*, pp 172-180), these defendants deny all the above allegations which they characterise as "maliciously false and that to the knowledge of the plaintiff" (*paragraph 11*). In paragraph 12, they state that the second Kumar was ill for some time and in 1909 went to Calcutta for treatment. He was there treated by some eminent doctors, and on their advice proceeded to Darjeeling shortly after for a change, accompanied by his wife, his wife's brother Satyendra, the family physician Dr Ashutosh Das Gupta, his private secretary Mukunda Lal Guin, his officer and relation Birendra Chandra Banerjee and some other officers and servants. At Darjeeling he was placed under the treatment of Col Calvert, Civil Surgeon, and Rai Nibaran Chandra Sen Bahadur, Assistant Surgeon, having had an acute attack of biliary colic from which he had been suffering for

some time The treatment was of no avail, and he died on the 8th May, 1909 at about midnight The defendants set out in the next paragraph *in extenso* the condolence letter which Calvert wrote to Bara Kumar on the 10th May, 1909 As it was not possible to make necessary arrangements for the cremation at night, the dead body was taken out the next morning in a procession befitting the position of the Kumar, coins being distributed to the poor on the way At the *sasan* the body was duly cremated and burnt to ashes In the following paragraph, the defendants quote in full Calvert's death certificate of the 7th July, 1909, and another certificate of death given at a later date by W M Crawford, the then Deputy Commissioner of Darjeeling, both of which certificates, it is stated, had to be obtained in connection with the claim on an insurance policy on the life of the second Kumar

In paragraph 20, a categorical denial is given to the allegations that the second Kumar was poisoned, that he became unconscious and was taken to the cremation ground at night, that rain and storm came on thereafter, that the mourners left the body and took shelter elsewhere, and that on return they found the body missing and went back home The defendants also deny that the Kumar recovered consciousness a few days after and found himself in the midst of *Naga sannyasis*, or that he recovered as the result of this treatment and continued to live with them, or that he had almost lost his memory as the result of the poisoning

Ananda Kumari Devi who filed a separate written statement (*Vol 1, pp 185-188*), beyond admitting that the Kumar accompanied by his wife had gone to Darjeeling for a change, denied each and every one of the allegations in paragraph 2 of the plaint and stated her belief that the second Kumar had died at Darjeeling shortly after his arrival there

POINTS OF DIVERGENCE

With reference to the different topics indicated above, the divergences between the plaintiff's case and that of the defendants may be summarised thus —

Topic	Plaintiff's case	Defendants' case
(1) <i>Nature and course of illness</i>	(i) Ill from early morning of 6th May to <i>evening</i> of 8th May (ii) Ordinary gastro-intestinal irritation followed by symptoms pointing to arsenic poisoning	(i) Ill from early morning of 6th May to <i>midnight</i> of 8th May (ii) Biliary colic
(2) <i>Cause of death or supposed death</i>	Not biliary colic, but judging from symptoms, arsenical poisoning	Collapse following upon an acute attack of biliary colic (gall-stone) due to the stone getting impacted in the cystic duct
(3) <i>Hour of death</i>	About <i>dusk</i> on the evening of 8th May	<i>Midnight</i> (11-45 p.m.) of 8th May
(4) <i>Evening cremation</i>	Cremation procession in the evening of 8th May and to <i>old sasan</i> , turning	No procession or cremation in the evening of 8th May

<i>Topic</i>	<i>Plaintiff's case</i>	<i>Defendants' case</i>
	out to be abortive owing to disappearance of body	
(5) <i>Rain and storm</i>	Heavy rain and storm at night on 8th May, causing the mourners to run away for shelter, leaving the "dead" body, which they subsequently missed on their return	No rain or storm either on 8th or 9th May
(6) <i>Morning cremation</i>	Funeral procession on the morning of 9th May along Commercial Road route to <i>new sasan</i> with a body not that of the Kumar hurried cremation	Funeral procession on the morning of the 9th May along Thorn Road route to <i>new sasan</i> with the body of the Kumar, and normal cremation with full rites and ceremonies
(7) <i>Rescue</i>	Rescue by a sannyasi or sannyasis from the sasan	No rescue—story altogether faked

CHARGE OF CONSPIRACY

The court below held in favour of the plaintiff on every point, except that on the question of alleged poisoning, it expressed itself in a way which led Mr Chaudhuri to argue that the court had come to a finding negativing a charge of "conspiracy" to poison. It was wrung out of Dr Ashutosh Das Gupta in cross-examination that he had given the second Kumar on the night of the 7th May a medicine, according to his own prescription, which contained a dose of arsenic (*Ex 51 (a), Vol I, p 277, same as copy produced during commission evidence in London, Ex 427 (d), Vol I, p 293*). The evidence did not disclose any other irritant than the arsenic in this prescription. The giving of this medicine, according to the learned judge, was itself an extremely suspicious circumstance, even if the suspicion was not deepened by the fact that Dr Das Gupta first denied that it was at all his prescription (*Vol 16, p 247, ll 1-8*), and then, as the judge says, tried to hide it by perjury (*Vol 16, p 247, ll 1-8, p 251, l 26, p 252, l 24, p 255, ll 8-18, p 265, etc*). In view of this state of the evidence, what the court said was that so long as the "bare possibility" remained that Dr Das Gupta had given this medicine to the plaintiff "like a quack" and got frightened at the result, it could not find that he had done it "wilfully" to cause death (*Vol 18, p 353, ll 14-16*). Whether this really amounts to a finding against conspiracy, as Mr Chaudhuri contends, is more than doubtful. It is one thing to say that the court cannot find there was conspiracy, and it is quite a different matter to hold that there was none. A positive finding, such as would rule out the existence of a conspiracy, is something very different from a statement which is on the face of it of a negative character, merely expressing the inability of the court to hold conspiracy as definitely established. As it is, the learned judge does no more than say that on the evidence he could not find conspiracy as a fact, not that the evidence established the contrary. Suffice it to point out that in the very next sentence he goes on to state that he must find "that the

irritant was arsenic as there was nothing else, and nothing else explains the symptoms that appeared the next morning" (*Vol 18, p 353, ll 15-17*)

Mr Chaudhuri made a great point of the fact that there was no conspiracy to poison pleaded in the plaint, and he contended, therefore, that not only could the court not come to a finding against his clients on the question, but it should have shut out all evidence of conspiracy. This, again, is a contention which to my mind has no merit in it for, I am not aware of any rule of pleading which required the plaintiff to set out any part of his evidence in the plaint. He made a definite allegation of poisoning in his pleading, and this in my opinion was quite sufficient, and undoubtedly entitled him to give evidence of facts from which conspiracy could be inferred. The relevancy of these facts lay in this that they had an important bearing on the question of the subsequent conduct of the parties concerned in attempting to conceal the real cause which had produced the condition of apparent death of the second Kumar.

In this court Mr B C Chatterjee stated to us quite early in the course of his arguments that his definite case was that on the evidence there could be no room for any theory of accidental administration of poison, and in my opinion there is nothing in the judgment of the trial court which might be supposed to contradict such a case, if it could be established.

FINDINGS ON DARJEELING CHAPTER—HOW FAR BASED ON IDENTITY

As I have said before, the court below has found in favour of the plaintiff on all material points in the Darjeeling chapter, but in dealing with the various questions which arise out of the contentions of the parties in this connection, it will be necessary to bear in mind the criticism which Mr Chaudhuri repeated before us with unwearied insistence that the learned judge did not make any independent examination of the relevant evidence on these points and came to no independent findings thereon. His conclusions, it was said, were in the last analysis based on his findings already arrived at on the question of identity. It will be seen that this betrays a complete misapprehension of the judgment. As will appear in connection with each of the topics to be dealt with, there is really no basis for suggesting that the method followed by the judge is not to arrive at a straight conclusion of fact on the evidence on any particular point, but merely to state some of the difficulties in the plaintiff's way and then to avoid a conclusion by saying that whatever the evidence on the defendants' side and whatever the improbabilities in the plaintiff's story, they do not displace the identity already found.

Mr Chaudhuri fastened upon a number of passages he picked out from the judgment which, taken out of their setting and read as isolated statements, might perhaps lend some support to his contention, but such support is no more than plausible, and it is really a travesty of the judgment to found on these and suggest that the learned judge deduced every finding of his on death and cremation ultimately from identity. It is just as well to refer to these passages, and consider their real import in connection with the five main questions formulated by Mr Chaudhuri. (The references hereunder are all to *Vol 18* of the paper-book)

APPELLANTS' GENERAL CRITICISM CONSIDERED

I On the first question—real death or only apparent death—Mr Chaudhuri quotes the following passage as if the learned judge's conclusion on this point was expressed therein —

"The fact that the body was left at the *sasan* (cremation ground) during the rain and disappeared, is no proof that it was alive, and the real proof is that the plaintiff is the same man" (p 394, ll 10-12)

And further on —

"Nobody will accept this evidence, or accept it as proof of identity, if it were not otherwise proved, but granted the identity, there would be no reason to reject it" (*ibid*, ll 18-21)

All this, it will be observed, was said by the learned judge, not in connection with the question of death or apparent death, but with reference to the plaintiff's story of rescue, and if anything, the first extract really puts the case very much against the plaintiff. What the learned judge means to say is that the plaintiff has got to prove that the body, "was alive", but he cannot discharge this onus merely by showing that the body had disappeared from the *sasan* he must further prove that he was the man whose body had so disappeared. It could doubtless be said that this further proof was furnished by the evidence of identity, which the learned judge had already accepted and which, if accepted, would make it unnecessary to go into the evidence of rescue and of the plaintiff's life as a sannyasi after rescue. All the same the learned judge says he must still take the evidence given to prove rescue and the sequel until the plaintiff's appearance at Dacca. The last extract merely points out that this evidence is quite consistent with the conclusion already reached on the question of identity, not that, having regard to the unusual character of the story, this evidence will be accepted as proof of identity. The learned judge makes this quite clear later on where, referring to the evidence of the rescuing sadhu Darsan Das, he says,

"It can no more prove the identity than the testimony of many of the numerous witnesses on the plaintiff's side unchecked by facts resting on nobody's credibility alone. But given the identity, otherwise proved, the account is clear and consistent, and unshaken by cross-examination" (p 394, ll 30-34),

and again —

"His account reads like a fairy tale, and if the plaintiff needed it to establish his identity, he would fail, for it can no more be found on this testimony than it can be found upon his testimony that he is the Kumar" (p 396, ll 22-25)

In other words, the learned judge accepts the story of rescue as corroborated by the evidence of identity.

II With reference to the second question—the hour of death—Mr Chaudhuri refers to two passages, in which he concedes that the learned judge does make a "sort of attempt" to come to an independent finding that death took place at dusk —

(i) "For, indisputable facts point to and establish, that the Second Kumar 'died' or was taken as dead at between 7 and 8 p.m. on

the 8th May That is established by the following, not one of them, but all taken together" (p. 355, ll 18-21)

- (ii) " if the body of the Kumar was taken there (i.e., to the *sasan*) that night, as it must have been, if he had died at about dusk" (p 376, ll 17-18)

It is difficult to see how from these passages any one can reasonably contend that the finding as to the hour of death was not based on a consideration of the evidence Mr Chaudhuri's specific complaint is that the learned judge did not refer to the evidence of Bibhabati Devi or to the documentary evidence of the defendants on the point This is wholly incorrect (see, for instance, page 362, ll 35 *et seq* where the defendants' oral evidence is considered), and is admittedly so with reference to the documentary evidence, which, Mr Chaudhuri could not deny, is dealt with at p 393 of the judgment, where the learned judge after stating the facts appearing in defendants' evidence says,—

"All these facts are swept away by the facts I gave, which show that the apparent death was at night, and the body was taken out at night" (p 393, ll 35-36)

Instead of quoting these lines which express the learned judge's view regarding the documentary evidence, Mr Chaudhuri relies only on the opening sentence of the next paragraph in which he summarises his general conclusion on this part of the case as a whole —

"My conclusion on this topic is that nothing repeals the conclusion touching the identity of the plaintiff with the second Kumar" (p 393, ll 37-38)

This, to my mind, amounts to a definite finding of the learned judge that he does not accept the defendants' case regarding death and cremation by which they sought to demolish the plaintiff's claim to identity

Mr Chaudhuri tried to present the learned judge's line of reasoning on this question in his own characteristic way the argument, he said, seemed to be this—that since the plaintiff was the same man he must have escaped cremation, and he could have escaped cremation only if he was taken to the *sasan* at night on the 8th May, and that he could not have been taken there then, unless the apparent death had taken place at dusk, and that *ergo* the apparent death took place at dusk With all respect to Mr Chaudhuri, this is a gross caricature of the learned judge's line of argument which he might have been spared

III On the third question—the evening procession and failure of the cremation—Mr Chaudhuri first quotes the following passages —

- (i) "The real test of the evidence touching this part of the enquiry is the hour of death, but of the witnesses who joined the funeral procession at night, or saw it pass, one (that is, one of these witnesses) might well rest on his own credibility, and another (is) almost as good as he" (p 364, ll 27-30)

(ii) Then again —

"This account, however consistent, will sound like a tale Its real security is the "death" at dusk, and the fact that the body was taken to the *sasan* that night This last fact might well rest upon the fact of death at dusk alone, or this coupled with the evidence of Padmini Babu, but there is besides other

evidence of people who had seen the procession pass at night etc" (p 366, ll 20 et seq)

How these two extracts at all support Mr Chaudhuri's criticism is more than I can comprehend

The first question was whether the Kumar's body was taken out to the *sasan* in the evening as alleged by the plaintiff, and the second, whether the body was then cremated. It is evident that the whole of the plaintiff's story would be wiped out, if the supposed death had not taken place at dusk, and this is all that the learned judge meant by saying that the real test of the evidence touching this part of the inquiry was the hour of death. This did not mean that he was not going to consider the positive evidence given by the plaintiff regarding the evening procession or the failure of the evening cremation, but intended to rest his finding merely on the fact of "death" having taken place at dusk. In point of fact, as the judgment will show, he did consider and accept the evidence of the plaintiff's witnesses who say that they joined the funeral procession at night and went to the burning ground, among whom he specially mentioned two, *viz*, Padmini Mohan Neogy, P W 655 (Vol 8, pp 249-255) and Chandra Singh, P W 968 (Vol 11, pp 84-94). He also considered "other evidence", including the testimony of persons who had seen the procession pass at night, and it is these witnesses whose evidence he does not give in detail, but accepts all the same, though in doing so he makes a remark which, if anything, only shows his fairness, but which is seized upon by Mr Chaudhuri as showing that ultimately death at dusk remained the only ground in support of the finding on the third question. The remark is this—"They would not be believed if death at dusk was not a fact, and if that was a fact, there would be no reason to disbelieve them" (p 366, ll 37-38). The witnesses of whom this is said are specifically mentioned by the learned judge—P W 940, Ranjit Shingh (Vol 10, pp 379-382), P W 963, Indra Singh Satri (Vol 11, pp 49-52), P W 966, Dhanjit (Vol 11, pp 61-64), P W 978, Lal Chand (Vol 11, pp 237-240), P W 980, Mahammad Ashraf Alam (Vol 11, pp 246-251), and P W 983, Santa Bir Shung (Vol 11, pp 259-263). None of these witnesses are among those who accompanied the procession to the *sasan* (Vol 18, pp 365-366).

IV As regards the fourth question—the burning of a substituted dead body on the 9th May—Mr Chaudhuri says that the learned judge is most direct in his reliance on identity, and quotes the following observations from the judgment—

"The extreme improbability of this case is obvious, and its real answer is the identity of the plaintiff, and the fact, apart from this identity, that 'death' had occurred at a little after dusk and the body taken out at night, and that body never cremated. But the evidence on this point must be dealt with on the footing as if these facts have not been found" (p 377, ll 23-28).

Here, again, one is at a loss to appreciate the point of Mr Chaudhuri's comment. It is doubtless admitted by the plaintiff that a body, not that of the second Kumar, was taken out in the procession on the morning of the 9th May, and it also remains a fact that the plaintiff has not been able to adduce any evidence as to whose body it was, or how it had been procured, or that it was not the body of the Kumar. But as I have endeavoured to explain in an earlier part of this judgment, this part of the plaintiff's case need not necessarily rest on positive evidence that the body was not that of the second Kumar, but may be held to follow as a

legitimate inference from other facts—death at dusk, attempted cremation in the evening and its failure, coupled with the fact that the body was not taken back to the house, during the night. The plaintiff's story of a substituted body is no doubt on the face of it an improbable one, as is frankly stated by the learned judge himself, but the mere fact that it is improbable need not stamp it with falsity. In the passage which Mr Chaudhuri quotes the learned judge does not profess to meet the case of "extreme improbability" by reference only to identity as a proved fact, but expressly mentions other facts, which apart from identity would in his opinion constitute a complete answer. All the same, although the learned judge definitely found the other facts as well as identity fully established on independent evidence, he still proposed to examine such evidence as was on the record regarding the burning of a substituted body on the footing as if those facts had not been found. It is surprising that instead of acknowledging the obvious fairness of the learned judge in so dealing with the matter, learned counsel for the defendants should find in this a ground for an unmerited attack. The "evidence on the point" which the learned judge says he proposed to consider is *inter alia* the evidence on the plaintiff's side regarding the suspicious circumstances attending the morning procession and the morning cremation, the evidence of Dr Pran Krishna Acharyya, and Satyendra's statement in cross-examination that it was not his case that the body of the second Kumar was taken away in the evening, brought back and taken out again, next morning (Vol 16, p 540, ll 35-40).

A further passage from the judgment which Mr Chaudhuri quotes in this connection is this —

"If the identity has been proved with mathematical certainty, it cannot be displaced by the cremation in the morning of a substituted body. Everybody appreciates its extreme improbability, but it cannot displace the identity" (p 393, l 44—p 394, l. 3)

Quite characteristically, again, in quoting this passage Mr Chaudhuri leaves out the words which follow immediately after—"and the facts connected with it, and the lies told about it—Kasiswari Devi and her alleged part in it and the rites and all the rest—and the fact that less than 10 days after the declaration of identity by the plaintiff Satya Babu goes to Darjeeling to pin the witnesses down, show that it was not a normal funeral at all" (p 394, ll 3-7)

I have no hesitation whatever in rejecting Mr Chaudhuri's contention that the sole ground of the learned judge's conclusion on this part of the case is identity, and that, to quote Mr Chaudhuri's words, "the judge omits altogether to consider the improbabilities and the proper effect of his own finding that there was no conspiracy and no deliberate poisoning",—this last, by the way, as I have already shown, not being his real finding at all.

V As regards the fifth question—that of rescue and the plaintiff's life with the sannyasis—Mr Chaudhuri relies on certain passages already dealt with in connection with his first question, and quotes two further extracts from the judgment where the learned judge deals with the story of the plaintiff's wanderings.

On this question of rescue and after, it may perhaps be argued with some show of reason that the learned judge relies to some extent on identity. What he says is that the evidence on these points could not be relied on in proof of identity, but if identity was otherwise established, the story became quite acceptable.

This is what he says.—

"The account that the plaintiff gives of this period of his life rests on his testimony and that of Darsan Das (*P IV 991, Vol 11, pp 378-422*), but it discloses nothing that shakes the conclusion otherwise reached, and not on the strength of this account that he is the same man as the Kumar" (*p 398, ll 22-25*)

Again, in conclusion —

"Mr Chaudhuri reasonably asked why it should be supposed that in the plaintiff's case unusual features occurred. The answer is that from Darjeeling to this point the enquiry is not to establish identity, but to see if anything excludes it, the identity being established by other facts. If that is proved, there is nothing from Darjeeling to his arrival at Dacca that would shake the conclusion, and given the identity, there will be no reason to reject it on the ground that it involves a breach of a law of nature. It involves no such breach" (*p 402, ll 23-30*)

These last observations were made with special reference to the defendants' arguments against the plaintiff's story of loss of memory, but Mr Chaudhuri had to admit before us that he could not maintain the view that the plaintiff's case on this head must be rejected merely because it did not happen to correspond to any recorded case of abnormal psychology, be it amnesia or double personality or a case of any other type.

Having read and re-read the judgment with the closest attention in the light of Mr Chaudhuri's criticisms, I feel bound to say that it is absolutely futile to contend, as he did, that on none of the points concerning the events at Darjeeling and after, was there any independent finding on the evidence and the probabilities. Mr Chaudhuri permitted himself a fling at the judge in rather picturesque language. "The judge", he said, "toils with his problem through ninety-four weary pages like Sisyphus with his stone, and one finds it rolling down every time back upon identity." No wonder, this drew forth from Mr Chatterjee the retort that Sisyphus in this figure of speech was not the learned judge, but learned counsel for the defendants who was continually rolling down to the point of identity from the hill-top, where the learned judge had quite safely landed his stone.

Mr Chaudhuri, I may mention, avoided reading the judgment as a whole but placed excerpts only, thereby conveying to the court, at any rate to me, a wrong perspective altogether which had to be corrected later. It is this failure to take a complete and comprehensive view of the judgment that seems to me to lie at the bottom of much of the criticism which has been directed against it. Looking at the judgment as a whole, it is not indeed difficult to follow the scheme which it adopts in dealing with the broad aspects of the case.

SCHEME OF THE JUDGMENT

The learned judge starts by saying that the main question is whether the plaintiff is the second Kumar, and he takes up the issue of identity first. He might perhaps have begun with the question of death and cremation, and it may be that if he came to a finding on this question in favour of the defendants, that might have meant an end of the plaintiff's case. But equally may it be said that a decision in the plaintiff's favour on the issue of identity ought to be an end of the defendants' case. The fact remains that the learned judge has dealt with identity first, and he gives his reasons,

right or wrong, for his conclusion that the plaintiff is the Kumar. He examines the grounds on which identity may be established. He takes up first what he describes as the direct evidence of identity on the plaintiff's side (*Vol 18, pp 124-157*) this consists mainly of evidence of recognition by near relations and others which he holds to be honest, followed by long and intimate association with the family without producing any disillusionment. He considers also the direct evidence given by the defendants for the purpose of negating identity, which he finds himself unable to accept (*ibid, pp 157-183*). He next examines the points of physical similarity or dissimilarity urged on one side or the other, and is convinced by the marks of identity—the "rocks", as he calls them, in the "morass" of evidence—which, he says, in their collocation can never occur in a second individual (*pp 183-252*). The learned judge is not, however, content to rest his conclusion on these facts alone. He checks and tests them by reference to other facts which might conceivably provide a check and a test.

To this end he first turns to explore the mind of the plaintiff to see if it is at all different from that of the second Kumar as it might have been, if he were alive to-day, and finds it is not (*ibid, pp 255-278*). This is not all. He then proceeds to apply the test of literacy and hand-writing (*ibid, pp 278-304*), and holds that the plaintiff satisfies this test. Still another question he thinks he must consider—whether the plaintiff is a Bengalee or not, and his answer is in favour of the plaintiff (*ibid, pp 402-422*). This he reserves to the last as the more convenient course to be dealt with along with the question of the Punjab enquiry. But the crowning and most decisive test which he holds the plaintiff must survive in order that identity may be placed on an unshakeable basis is death and cremation, and to this issue he, therefore, addresses himself with an open mind,—considering the evidence, as I think, entirely on its merits with a view to see if it yields a result consistent with identity or in contradiction thereto, and not, as Mr Chaudhuri supposes, twisting, torturing or suppressing the evidence in order to extract from it a conclusion in conformity with his pre-conceived views on the question of identity.

That takes the learned judge to the Darjeeling chapter, and on every one of the topics arising in connection with it, he examines the evidence on either side, tries to appraise it at its proper value according to his lights, and then finally comes to his conclusions. In dealing with this chapter, what he does is this. He first goes into the question of the nature of the illness. Is it a fact that the Kumar died of biliary colic, as suggested by the defendants, or is it a fact that he developed symptoms of arsenic poisoning, as the plaintiff alleges? Then he takes up the question of hour of death, because he considers death at dusk to be the crux of the plaintiff's case, and finds in favour of the plaintiff. Then comes the question about the funeral procession, and on the evidence he holds that a procession left the house the same evening about 9 P.M. But this is not enough. There still remains the question as to whether it was followed by a successful cremation, and he takes up this point, and rightly or wrongly, comes to the conclusion that the cremation failed.

The next question he takes up is that of the morning cremation which is a very important part of the case, particularly as a morning cremation is admitted by the plaintiff. On this topic, there is the defendants' positive evidence that the body which was taken out was that of the Kumar. On the other hand, there is the plaintiff's evidence, but this evidence falls short of establishing affirmatively that the body was not that of the Kumar. There

are, however, certain suspicious circumstances from which the court is asked to draw an inference to that effect, these circumstances being that the face was covered up and the funeral was not a normal funeral. The court has got to set this against the defendants' positive evidence, as it has also to set against the plaintiff the improbability inherent in his story—that of another body being procured and substituted in the course of the night.

This at once raises the question, whether this improbability is so overwhelming that the plaintiff's story must be rejected out of hand on this ground. The learned judge thinks not, for he holds that there are certain facts, apart from identity, already established which according to him, in their cumulative effect, tend to override such improbability.

He finally proceeds to deal with the question of the alleged rescue of the plaintiff by a party of *sannyasis* at the cremation ground and traces the history of his wanderings till he arrives at Buckland Bund in December, 1920 or January, 1921.

To my mind, there can be no doubt that this in broad outline is the scheme of the judgment, but whether any particular link in the learned judge's chain of reasoning is sound or not, nothing is gained by misrepresenting his method of treatment or the tenor of his judgment. As the evidence comes to be examined, it should appear if there was really any justification for the attempt so sedulously made by Mr Chaudhuri to reduce the learned judge's mode of handling the case to the point of absurdity.

Before dealing with the evidence of the second Kumar's illness, which is the first in the list of questions to be considered in the Darjeeling chapter, it will be helpful to set out a number of documents to which frequent reference will be necessary. They are—

- I a set of telegrams which appear to have been sent from Darjeeling to Bara Kumar at Jaidebpur about the second Kumar's illness, and
- II a number of prescriptions made at the time at Darjeeling for the second Kumar.

I TELEGRAMS

In all, seven telegrams from Darjeeling have been produced, three of the 6th, one of the 7th and three of the 8th May, 1909. Five of these were sent through the Railway and two were Indian Telegraph messages sent from the Darjeeling Post and Telegraph Office. The telegrams, it will be remembered, were among the papers which were sent to Sarajubala Devi by Needham in April, 1917 (*Vol II*, p 74) and were afterwards sent on by her to Lindsay in pursuance of his requisition of the 27th October, 1921 (*Ex 55*, *Vol II*, p 355). Sarajubala retained copies of the documents which she filed before the Commissioner (*Vol 3*, p 72, ll 6-10), and copies of these telegrams have been marked as exhibits on behalf of the plaintiff on the admission of the defendants, the defendants producing the originals. It is somewhat remarkable that none of the telegrams was sent by Satyendra, but the sender was either Mukunda Guin, Private Secretary of the second Kumar, or Cabral, or Dr Ashutosh Das Gupta. Satyendra admits, however, that he had seen to the despatch of these messages (*Vol 16*, p 465, ll 13-21).

The telegrams in order of despatch were as follows, the addressee in each case being Bara Kumar —

6TH MAY, 1909

- 1 Sender ... Mukunda
Hour of despatch . 10 A M
How sent Railway
Message "Last night Kumar had fever below
99 No anxiety No fever now
Kindly wire health " (Ex 261,
Vol I, p 296, original marked
Ex 261 (a))
- 2 Sender Cabral
Hour of despatch 6-45 P M
How sent Railway
Message "Kumar attacked fever yesterday with
severe stomach pain Civil Surgeon
attending " (Ex 223, Vol I,
p 294)
- 3 Sender Mukunda
Hour of despatch 8-55 P M
How sent Indian Telegraphs
Message "Fever abdominal pain lasted two
hours Now remission No anxiety
No fear of recurring " (Ex 224,
Vol I, p 301)

7TH MAY, 1909

- 4 Sender Mukunda
Hour of despatch 7-10 A M
How sent Railway
Message "Kumar had good sleep last night
No fever No pain " (Ex 282,
Vol I, p 297, original marked
Ex 282(a))

8TH MAY, 1909

- 5 Sender Dr Ashutosh Das Gupta
Hour of despatch 7-20 A M
How sent Indian Telegraphs
Message "Had fever slight pain yesterday
Now normal No anxiety " (Ex 225,
Vol I, p 302)
- 6 Sender Mukunda
Hour of despatch . 11-15 A M
How sent Railway
Message "No fever slight pains vomiting
tendency Civil Surgeon attending
No anxiety Coming giving rice
Wire 1,000 passage " (Ex 221,
Vol I, p 298, original marked
Ex 221(a))

7	Sender	Mukunda
	Hour of despatch	3-10 P M
	How sent	... Railway
	Message	"Kumar is seriously ill Frequent watery motions with blood Come sharp" (<i>Ex 222, Vol I, p 300</i>)

TELEGRAM FROM BARA KUMAR (8TH MAY)

8	Sender	Bara Kumar
	Hour of despatch	4-45 P M
	Message	"Very anxious Wire condition very often Treat with best medical help Wire immediately present condition" (<i>Ex 260, Vol I, p 299</i>)

The plaintiff has examined one Niranjan Roy, P W 982 (*Vol 11, pp 255-258*), who was a signaller at the Jaidebpur Railway Station in May, 1909 and speaks to some of the telegrams which were received by him during his hours of duty, 6 A M to 6 P M He explains the code words indicating the hour of despatch as well as the nature of the message the telegrams marked Exs 222-225 being all urgent This witness states that at Jaidebpur telegrams came by two systems, Railway and Postal Telegrams received at the Railway Station were despatched immediately by a messenger, but at the Post Office receipt and delivery of telegrams would take place only during office hours mentioned in the Telegraph Guide The particulars of the telegrams given above have been verified from the originals and are accepted as correct by both parties

II PRESCRIPTIONS

Six prescriptions in all have been produced, one of the 6th May, one of the 7th, and four of the 8th Of these, that of the 6th and two of the 8th May were by Calvert, and the other two of the 8th are by Dr Nibaran Chandra Sen, while the remaining prescription, the only one of the 7th May, purports to be by Dr Ashutosh Das Gupta The originals of none of these prescriptions are forthcoming, but certified copies were put in which were obtained from the record of the Defamation Case, in which the originals appear to have been produced Both sides have accepted these copies as correct, and it is admitted by Dr Ashutosh Das Gupta, D W 365, that these were all the prescriptions made for the second Kumar during his illness at Darjeeling (*Vol 16, p 268, l 26*) This witness had previously deposed about the Kumar's illness not only twice in the Defamation Case in which he was the complainant, but also in a group of Title suits of 1921 instituted by the Bhowal Raj which have been collectively referred to as the Sripur case, and in which it appears a plea of defect of party was taken on the ground of the second Kumar not having been joined, leading to the raising of an issue, though afterwards expunged, involving the question of identity of the plaintiff Dr Das Gupta's statements in these cases were put to him in cross-examination in the present suit and have been marked as exhibits (*Sripur case—Exs 391-394(20), Vol III, pp 19-24, Defamation Case—Ex 460, Vol II, pp 375-397*) He admits that he had seen the prescriptions at the time he was previously deposing (*Vol 16, p 260, ll 12-13 and l 32*), and he had also read them as well as the telegrams and his former depositions before he gave his evidence at this trial (*ibid, p 248, ll 8-10*,

p 254, ll 23-24) At one stage he no doubt suggested that his present evidence was better, as his memory was now refreshed by the telegrams and prescriptions, implying that he had not seen them on the previous occasions (*ibid*, p 253, ll 22-23, p 254, ll 26-29, p 256, l 10, p 260, ll 37-38), but this was a position from which he was quickly forced to retire (*See judgment*, Vol 18, p 326, ll 1-9)

It is significant that though the defendants put to Calvert an interrogatory (*Interrogatory No 10*, Vol 2, p 202, ll 6-8) asking if he remembered having prescribed any medicine to the second Kumar, and if so, for what disease, they did not apparently want him to refer to any of the prescriptions, not even to the three he had made. A note was added to the interrogatory merely to the effect that the witness might, if he liked, refresh his memory by the death certificate and the letter of condolence. In his answer Calvert stated that he had seen copies of prescriptions which he recognised as prescriptions he was in the habit of giving for stomaclic troubles. But he found it difficult to say if these would be consistent with the treatment of the second Kumar for his last illness. They might be suitable for "interval treatment", but not for the attack itself (Vol 2, p 204, ll 10-19). In cross-examination he made it clear that all that he was shown by the defendants' solicitor before giving his deposition were copies of his own prescriptions, which were marked Z 1, Z 2 and Z 3 for identification (*ibid*, p 211, ll 1-16). Copies of other prescriptions were also put to him in cross-examination by the plaintiff, and marked A 1, A 2, A 3, A 4, A 5 (*ibid*, p 216).

The prescriptions, which were all dispensed by a local firm of pharmaceutical chemists, Smith Stanistreet & Co, may now be set out —

6th May, 1909

(Only one prescription)

1 Prescription—by Calvert

Ex 51, Vol I, pp 273-274

Same as Z 1 shown to Calvert, Ex 433, *ibid*, p 275

Druggists' serial number—3412/3

(i) Re—

Spt Amon Aromat	℥ iii
Sodi Bicarb	℥ i
Tinct Card Co	℥ vi
Spt Chloroform	℥ iss
Aqua Cinamon	ad ℥ vi
Mft—mixt	
℥ i—One mark every 2 hours	

(ii) Re—

Lant Opi	℥ ii
For external application	

7th May, 1909

(Only one prescription)

2 Prescription—by Dr. Ashutosh Das Gupta.

Ex 51(a), Vol I, p 277

Same as A 5 shown to Calvert, Ex 427(d), *ibid*, p 293

Druggists' serial number—3430.

Re—

Quinine Sulph	Gr	iv
Alon	Gr	$\frac{1}{2}$
Ext Nux Vomica	Gr	$\frac{1}{3}$
Buonymin	Gr	i
Acid Arsimor (Arsenius)	Gr	1/100
Ext Gent	Grs	
Mft Pill (silver)		

1 T D S P C

This is the only prescription containing arsenic and will be referred to as the Arsenic prescription

N B—In the copy shown to Calvert (A 5), Ex 427 (d), Vol I, p 293, occur the words "Send 25", which are not to be found in the copy, Ex 51(a) at p 277

8th May, 1909

(Four prescriptions)

3 Prescription—by Calvert

Ex 51(e), Vol I, p 285

Same as Z 2 shown to Calvert, Ex 433(a), *ibid*, p 287

Druggists' serial number—3439

Re—

Mag carb		
Sodi bicarb		
Bismuth Carb		
Pulv Tragacanth Co	aa	$\overline{3}$ i
Oil cajuputi		m xii
Aqua menth pip	ad	$\overline{3}$ vi
T D S		

4 Prescription—by Dr Nibaran Chandra Sen

Ex 51(b), Vol I, p 279

Druggists' serial number—3440/1

(i) Re—

Sodi Citrate		$\overline{3}$ i
Aqua Sterilised	ad	$\overline{3}$ vi
$\overline{3}$ i with milk as directed		

Same as A 1 shown to Calvert, Ex 427, *ibid*, p 289

(ii) Re—

Glycerine pepsin		$\overline{3}$ ii
As directed		

Same as A 2 shown to Calvert, Ex 427(a), *ibid*, p 290

(iii) Re—

Pep Powder fresh

(iv) Re—

Atropia Tab	Gr	1/100
Strych Tab	Gr	1/30
Digitalin Tab	Gr	1/100
Ether Pure		$\frac{1}{2}$ oz
Morpha Tab	Gr	$\frac{1}{2}$

This last prescription has been referred to by Mr Chaudhuri as the "Armoury", but as the learned judge points out, it is not really a prescription, but merely a requisition for a number of standard drugs in tabloid form and a little pure ether (Vol 18, p 342, ll 6 and 16)

5 Prescription—by Calvert

Ex 51(c), Vol I, p 281

Same as Z 3, shown to Calvert, Ex 433(b), ibid, p 288

Druggists' serial number—3442/3

(i) Re—

Spt Ether	3 iv
Spt Amon Aromat	3 iv
Aqua Camphor	ad 3 viii

⅓ for a dose

(ii) Re—

Ext opu	
Belladonna	
Saponis	ad Gr ½
Mft Pill send 6 such	
1 T D S	"

6 Prescription—by Dr Nibaran Chandra Sen

Ex 51(d), Vol I, p 283

Druggists' serial number—3444/5

(i) Re—

Lint Saponis	
Sinapis Co	ad 3 ii

To rub all over the limbs with ginger powder
Same as A 3 shown to Calvert, Ex 427(b), ibid, p 291

(ii) Re—

Lint Chloroform	
Belladonna	ad 3 ii

To be applied over the stomach
Same as A 4 shown to Calvert, Ex 427(c), ibid, p 292

(iii) Re—

Spongis Lelini	12" x 12"
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N B Some of the abbreviations used in the prescriptions may be explained —

aa	of each a like quantity
ad	up to
f or ft	fiat, make
m	misce, mix (thou)
mist	mixture
ss	semisse, half
t d s	ter die sumendus,
	take thrice a day
p c	post cibum or cibos,
	after food or meals

It will perhaps be convenient to refer to the prescriptions hereafter, not always by their exhibit numbers, but by their serial numbers in chronological order as in the list given above, with date

The prescriptions as well as the telegrams are the only available contemporaneous documentary evidence of the second Kumar's illness, but obviously it can never be a satisfactory process to try and reconstruct the illness from the prescriptions. The best evidence on the point would undoubtedly be that of the attending physicians who had seen the patient, and the defendants have actually examined two of them, Col Calvert (*Vol 2, pp 201-224*) and Dr Ashutosh Das Gupta (*Vol 16, pp 240-346*), the third doctor Nibaran Chandra Sen having died. Unfortunately, however, Dr Ashutosh Das Gupta was a witness who was unceremoniously abandoned by defendants' own counsel and whose evidence one has only to read to be convinced beyond doubt that the learned judge did not at all over-state the case when he said, "this doctor came before me not to tell the court frankly what had happened, but to hide it altogether" (*Vol 18, p 325, l 44—p 326, l 1*). As regards Calvert, he himself protested when he was asked about the symptoms, saying—"You ask me 21 years after the man's death!" (*Vol 2, p 209, ll 26-27*), and again, when asked —

"Did you prescribe any medicine for the pain in the right side of the abdomen when you saw the Kumar first?"

he answered —

"I wish to protest against questions on immaterial matters which, in my opinion, after I had stated clearly the facts I know I remember, may lead me, or confuse me, to think that I remember these small details after so long a lapse of time" (*ibid*, p 210, ll 16-23)

After this, one would hesitate to feel at all safe in accepting his evidence even as regards the "details" on which he made it appear his recollection was better or less "confusing"

Apparently realising the difficulty of the position, Mr Chaudhuri invited us to accept the evidence of Bibhabati Devi, who, as the learned judge says, gave a "clear-cut" account of the second Kumar's illness. She is undoubtedly a person who may be expected to remember the facts connected with her husband's death, but it will be seen that the apparent strength of her evidence seems to constitute its real weakness

VALUE OF PRESCRIPTIONS AS EVIDENCE

This and other oral evidence will all have to be duly considered, but the prescriptions read with the telegrams are not altogether without value, for even if it may not be possible to draw a "clinical picture" of the second Kumar's condition from these materials, they might still be of use in testing the case made by either party regarding the nature and course of the illness. From this point of view, it appears to me, the plaintiff was fully justified in putting the prescriptions not only to Calvert, but to other medical witnesses who were called on one side or the other, such as Major Thomas, D W 9 (*Vol 12, pp 336-376*) and Lt-Col Denham White, D W 401 (*Vol 17, pp 152-171*) for the defendants, and Lt-Col MacGilchrist, P W 815 (*Vol 9, pp 340-368*) and Dr Bradley, P W 989 (*Vol 11, pp 348-369*) for the plaintiff. I fail indeed to see any point in the criticism which was advanced by Mr Chaudhuri in this connection on the strength of certain observations of Jenkins, C J, in *Jarat Kumari Dass v Bissessur Dutt*, (1911) 1 L R 39 Cal 215 at pp 257-258. On the other hand, I consider it a circumstance very

much in favour of the plaintiff that he procured and put in evidence copies of the prescriptions as well as of the telegrams,—yet another proof of his counsel's claim that his client was not only willing but anxious to face all available documents in support of his case Dr Ashutosh Das Gupta admitted in the Defamation Case that he used to keep copies of prescriptions, and that was also his statement in the present suit (*Vol 16, p 292, l 37—p 293, l 5*) The plaintiff actually called for the prescriptions from him, but these were not produced (*ibid, p 308, l 38—p 309, l 2*), and the plaintiff was consequently obliged to get the copies from elsewhere The prescriptions obviously could not be expected to prove arsenical poisoning, if anything, they might be of help to the defendants to prove their case of biliary colic, and yet the defendants would not put them to the consultant physician whom they called, nor to any of their other medical witnesses except to rebut the case made by the plaintiff

ARSENIC PRESCRIPTION

As already stated, among the prescriptions there was only one, prescription No 2 of 7th May (*Ex 51 (a)*), which contained arsenic, and that in a very small dose, 1/100th of a grain, as against the lethal dose which is generally taken to be two grains (P W 815, MacGilchrist, *Vol 9, p 343, ll 9-10*, and P W 989, Bradley, *Vol 11, p 361, l 9*), and it is necessary to state that it is not the plaintiff's case that the arsenic which got into the system of the Kumar and produced the symptoms of this form of poisoning must have been conveyed through this source, though this was the basis assumed by the defendants in their examination of their medical witnesses with reference to this prescription Thus, for instance, to Major Thomas, D W 9, they put the case thus —

Q—If these pills in *Ex 51 (a)* were given in accordance with the directions contained in the prescription, would they have caused any symptoms of arsenical poisoning?

A—No One pill three times a day, no

Q—Assuming that the second Kumar had colic pain on the 5th May and again on the 6th and his stomach was in an irritable condition, would the administration of three of these pills according to the direction in the prescription bring about symptoms of arsenical poisoning?

A—No I don't think so

Q—Assuming that 3 of these pills were given trussed up in solution, were they likely to cause symptoms of arsenical poisoning?

A—No

Quinine sulphate is extremely bitter Aloin and nux vomica are intensely bitter Aloe is proverbially bitter Arsenic is tasteless practically - Euonymin is very bitter also

Q—If 12 of these pills were trussed up together in solution and given to the patient, what would happen?

A—He would, it is practically certain, vomit the whole lot up

Q—Why?

A—Because, in the first place, these intensely bitter and irritating drugs would in such quantities irritate even a normal stomach—

even 48 grains of quinine also, and secondly, from the history I understand that the Kumar had already shown some tendency to vomit and that is all the more reason why this mixture should be rejected

My answer would be the same—it would apply even more so in the case of 25 pills given all at once

Q—If 25 of these pills were trussed up together, would the patient show any sign of poisoning?

A—He would show signs of strychnine poisoning, if any

In 25 of these pills there will be nearly half a grain, 5/12th of a grain, and in addition to this there would be brucine the effect of which will add itself to the effects of strychnine

Assuming 12 pills were given, still more likely that the symptoms of strychnine poisoning would appear rather than arsenic, because the strychnine and arsenic would be in the same proportion with regard to one another

If a poisonous dose of nux vomica was administered, the symptoms would be those of strychnine poisoning, viz, convulsions, spasms, resembling tetanus. The common symptom would be opisthotonos and that is spasmodic arching of the back

Q—Within what period of the administration of such nux vomica would such symptoms appear?

A—The symptoms would appear within a few minutes, 20 minutes at the latest

If a lethal dose were administered, death would take place within half an hour

I should say that the symptoms of strychnine poisoning are very dramatic, and a medical man worthy of the name would certainly know them. There is no mistaking them for any other symptoms except perhaps those of tetanus" (*Vol 12, p 338, l 11—p 339, l 21*)

To the same effect was the examination-in-chief of Lt-Col Denham White, D W 401 (*Vol 17, p 157*)

It will be observed that Major Thomas was practically not at all cross-examined by the plaintiff on the statement he gave in his examination-in-chief. All that was put to him was this —

"*Q*—To the question 'Arsenic is contra-indicated when gastritis or intestinal irritation is present', Col Calvert said, 'I would not prescribe it' (*Vol 2, p 217, ll 22-24*) Do you agree?

A—I agree. Personally I would not prescribe either" (*Vol 12, p 358, ll 7-10*)

This shows that the plaintiff made the case that this prescription so far as it went appeared to exclude biliary colic. On the other hand, a definite suggestion was put to the witness that this might be used as a "cloak"

"*Q*—Do you know that in India people wanting to poison by arsenic arm themselves in the first instance with a prescription containing arsenic?

A—I should think it very possible that they would do that" (*ibid., p 358, ll 30-33*)

Similarly, there was no cross-examination of Lt-Col Denham White by the plaintiff directed to showing that any pill or pills prepared according to this prescription might have produced the symptoms of arsenical poisoning in the second Kumar. All that was elicited from him was that from Calvert's evidence, not from the prescriptions, he formed the opinion that the case was one of *enteritis*, and in this the pills in *Ex 51 A*, which he called "horrible", would certainly not be given (*Vol 17, p 166, ll 13-15*)

In my opinion, Mr Chaudhuri was not at all justified in stating, as he did at an early stage in his opening, that the arsenic prescription was the whole basis of the plaintiff's story of poisoning. This was not made the basis either by the plaintiff in his evidence, or by the trial court in its judgment, as is clearly shown in the following remarks of the learned judge —

" as though it is anybody's case that if arsenic had got into the Kumar on the 7th and led to the symptoms, it must have come from this source. Dr Thomas admits what is obvious that if any one were minded to poison anybody with arsenic, he would make or get a prescription that might serve as a cloak and (be) capable of explaining the symptoms which include diarrhoea and blood in stools and arsenic in stools " (*Vol 18, p 331, ll 32-37*)

This is not at all inconsistent with the other passage on which Mr Chaudhuri relies, where the learned judge states that the "giving of this medicine" by Dr Ashutosh Das Gupta, meaning thereby the giving of a medicine prepared according to this prescription (*Vol 18, p 353, ll 11-15*), would itself be a circumstance of grave suspicion against him. As the learned judge explains clearly enough, the suspicion is not necessarily that Dr Ashutosh Das Gupta gave the medicine to the Kumar with felonious intent to kill him, but only that in making the prescription he had some ulterior purpose in view, and in support of this he calls attention to the evidence given by the witness regarding this prescription (*see for instance, Vol 16, p 251, ll. 8-25, p 254, l 30—p 255, l 30, p 264, ll 18-19, p 283, ll 5-6 and ll 15-17*).

It is no doubt true that in their examination-in-chief the plaintiff's medical witnesses dealt with the possible effect of an over-dose of the pills in *Ex 51(a)* on the patient, and said that in certain conditions even a therapeutic dose of arsenic might cause symptoms of poisoning (*MacGilchrist, Vol 9, pp 342-343, and Dr Bradley, Vol 11, pp 351, 352 and p 353, ll 24-26*). But as the learned judge points out, this evidence was given only "to illustrate the action of the drugs" (*Vol 18, p 330, ll 28-32*). Col MacGilchrist in fact expressly stated in cross-examination —

"I was not told that there was an attempt to poison the patient by giving him a large dose of A 5",

meaning thereby the arsenic prescription (*Vol 9, p 354, ll 21-22*)

Again,—

"Nobody told me that 12 of these pills were in fact administered. So far as my information goes, the poisoning might be due to accident—I have already said I had no knowledge as to whether it was due to accident or otherwise. There was no information that there was an attempt to poison the person" (*ibid, p 354, ll 38-42*)

Dr Bradley's evidence was not otherwise and he gave quite a reasonable explanation as to what would make him think of an over-dose of this prescription —

"Q —What brings over-dose in your mind?

A —The picture of arsenic poisoning I mean, if I had been called and seen the patient in that condition and seen this prescription, *Ex 51(a)*, the first question that I would ask (is) 'How many of these have you given him?' " (*Vol 11, p 352, ll 7-11*)

To any reasonable doctor, observing the symptoms and not suspecting foul play, a mal-administration of this prescription would naturally be the first thing to occur as a likely explanation

I may mention that on the 5th December, 1938, during Mr Chaudhuri's opening I distinctly asked him to state if he said that it was the plaintiff's case, supposing poison had been administered, that it had been done through some medicine prepared in accordance with this prescription, *Ex 51(a)* Mr Chaudhuri definitely answered that that was not so In fact I suggested to him at the time that the prescription might have been used as a sort of "camouflage", and he admitted that such a suggestion had in fact been put by the plaintiff to the defendants' medical expert Major Thomas

It is not really difficult to follow the plaintiff's case on the point it is that the evidence unmistakably points to the Kumar having developed symptoms of arsenical poisoning, and also to an overwhelming probability that the administration of the poison was deliberate, suggesting a conspiracy between at least two persons, Satyendranath Banerjee and Dr Ashutosh Das Gupta There was, however, expert medical evidence on record that normally the arsenic prescription, administered in medicinal doses, would not produce symptoms of poisoning, but it might, in particular cases, according to the idiosyncrasies of the patient So long as this "bare possibility" remained, it would doubtless be open to the defendants to explain away the symptoms which according to the plaintiff the Kumar exhibited, on a basis other than that of wilful attempt to poison In other words, if it was a criminal trial for murder, the defendants might claim the benefit of the doubt, and Mr Chatterjee pointed out that this was all that the learned judge meant in the passage already referred to, on which Mr Chaudhuri placed so much reliance as constituting a positive finding that there was no conspiracy at all —

"But so long as the bare possibility that he (Dr Ashutosh Das Gupta) gave this medicine like a quack and was frightened at the result remains, I cannot find that he did it wilfully to cause death" (*Vol 18, p 353, ll 13-15*)

These remarks of the learned judge, as I have said before, must be read along with those at *p 331, ll 31 et seq* It remains only to add that the defendants neither admitted any symptoms of poisoning, nor attempted any explanation such as the medical evidence might suggest in their favour

It may perhaps be useful now to summarise and collate briefly the medical evidence on the different prescriptions

(1) *Rc Prescription No 1 (6th May)*—*Ex 51*
(*Vol I, p 273*)

There are two medicines in it

- (i) a Spt Ammonia mixture, to be taken every two hours
- (ii) an opium liniment for external application

As to (i), the doctors are practically agreed that it is a simple carminative mixture for indigestion or dyspepsia, but will not be prescribed for acute biliary colic according to the defendants' doctors, it is, however, suitable for intervals of remission in biliary colic, while in the opinion of the plaintiff's medical witnesses, it is useless even for this purpose, if it is not wrong treatment altogether

Calvert agrees that it is used in dyspepsia or indigestion (*Vol 2, p 211, ll 18-22*). Referring to the prescriptions generally, not merely to this particular one, he says that in between attacks of biliary colic or remissions according to the severity of the previous attack, the patient is left with an irritable stomach and intestines, during which time gastric sedatives are recommended by the authorities, and the prescriptions contain samples of such sedatives (*ibid, p 215, ll 22-27*). In other words, he means that this prescription is suitable for "interval" treatment in biliary colic. In a severe attack he agrees that the first step would be the administration of morphine or opium, but so far as he recollects, the Kumar had only minor attacks on and off, finally culminating in his fatal seizure, which was not anticipated (*ibid, p 219, ll 10-14*).

Col. Denham White, D W 401, also states that the prescription is suitable for an interval in biliary colic. Putting himself in the position of the attending doctor, he says that the doctor gave this medicine on the 6th May apparently because he saw some distension and probably constipation (*Vol 17, p 158, ll 25-26 and ll 19-21*). In cross-examination, on being asked, with reference to this and Calvert's next prescription, *Ex 51(e)* of the 8th May, if these are *only* prescribed in intervals of biliary colic, he says "No", and adds, these are "commoner garden" medicines (*ibid, p 166, ll 31-33*).

Major Thomas, D W 9, says that it is suitable for treatment of any kind of dyspepsia including flatulent dyspepsia in the intervals of biliary colic, but is no good for relieving pain of biliary colic (*Vol 12, p 337, ll 15-18*).

On the plaintiff's side, Col MacGilchrist, P W 815, says that he would prescribe this medicine in simple indigestion, particularly when there is flatulence, but not for a man suffering from biliary colic. In biliary colic, when acute, he would advise hot applications, fomentations, hot baths, if the patient is equal to them, and hypodermic injection of morphia. Sodium bicarbonate (which is an ingredient in this prescription) would be useless in a paroxysm; during intermission it soothes the stomach and neutralises the acids, if there be hyper-acidity, and it increases the secretion of bile. What he would prescribe during intermissions is full diet, specially meat diet, which increases bile acids which have the power of dissolving gall-stones to some extent, and next, warm weak solution of alkalies, such as sodium bicarbonate or Vichy waters or Carlsbad waters, and thirdly, exercise, abdominal massage (*Vol 9, p 341, ll 1-25*). He was pointedly asked in cross-examination —

"If a doctor prescribes Z1, a doctor who has actually seen and examined the patient, as a medicine for the interval, would you call it a wrong treatment?"

The answer was —

"Useless. I would not call it wrong treatment but unnecessary. In the interval we give medicines to prevent formation of gall-stones, but this medicine will cause unnecessary trouble to the patient so far as biliary colic is concerned, and I call it not wrong, in the sense that it will cause no harm" (*ibid, p 356, l. 33—p 357, l 5*).

He admitted that if in the interval the patient had got flatulence and dyspepsia, the doctor would not be wrong in prescribing this medicine

According to Dr Bradley, P W 989, this is a very mild prescription for indigestion—a stock medicine (*Vol 11, p 348, ll 23-25*) Taking the two medicines in this prescription, he says the indications are indigestion—to relieve the pain of severe indigestion (*ibid, ll 30-31*) As regards interval treatment, he says there is not much to be done, but he would restrict or prohibit eggs in the diet, would give warm saline drinks, prescribe exercises and massage and advise the patient to go and see a surgeon in other words, the treatment is entirely surgical and not medical Shown this and the other two prescriptions of Calvert, he says he would not prescribe these for the intervals in biliary colic, unless by coincidence the patient had indigestion (*ibid, p 352, ll 31-37*)

As to whether indigestion or dyspepsia is caused by biliary colic, Dr Bradley says it is an extremely difficult question to answer loosely speaking, 50 per cent cases of gall-stone show no such symptoms (*ibid, p 353, ll 8-12*) Col MacGilchrist says that a man suffering from dyspepsia may get biliary colic, but not as an effect (*Vol 9, p 357, ll 13-14*) He accepts as one-sided the statement that in biliary colic most frequently the development of gall-stone is preceded and accompanied by continuous or intermittent dyspepsia (*ibid, p 359, ll 1-6*) Major Thomas has authority to show that one gets flatulent dyspepsia when one gets biliary colic with cholecystitis,—cholecystitis being inflammation of the gall bladders,—not that whenever one gets inflammation of gall bladder, biliary colic necessarily follows Or, as he puts it in a simpler form —“I can give an authority to show that you get flatulent dyspepsia with cholecystitis, and you also get biliary colic with cholecystitis” (*Vol, 12, p 356, ll 29-35*) Col Denham White is of opinion that gall-stone cannot occur without inflammation of gall-bladder, and there is no case of biliary colic in which there is no dyspeptic pain in the stomach (*Vol 17, p 156, ll 29-36*) It is perhaps not necessary to put the matter on a more definite basis than the learned judge has done, namely, that dyspepsia is often a concomitant of biliary colic, be it effect or co-effect of cholecystitis (*Vol 18, p 324, ll 36-39*)

As to (u), the trend of medical opinion is that this may be used to relieve superficial pain of any kind anywhere

Col Calvert admits that Lint Opi is a medicine for local pain of any description and may be used to relieve the pain of neuralgia He cannot say if there is any authority for using this medicine as an external application in biliary colic, but he adds that the question hardly arises, as this was not a case of what treatment was necessary for the patient, but what he would accept and agree to after consultation with his friends (*Vol 2, p 211, ll 23-35*) Later on, in answer to a suggestion that the authorities prescribe no medicine for painting externally in biliary colic, he says quite definitely —“No Nor should I with a patient except in the case of refusal of hypodermic medication” (*ibid, p 215, ll 11-14*).

Major Thomas admits that this is a medicine for external application for relieving pain anywhere, including the pain of biliary colic in the abdomen, though he would prescribe for this an injection of atropine with or without morphia (*Vol 12, p 337, ll 19-24*) In cross-examination he states that Lint Opi is not used now at all to relieve pain, not even pain of neuralgic character (*ibid, p 357, ll 33-35*)

Col Denham White says that Lint Opi may be given to relieve pain anywhere, and if a patient refuses hypodermic injection for pain of biliary

colic, it may be given as a substitute, but only as a second best (*Vol 17, p 158, l 32—p 159, l 4*)

Col MacGilchrist thinks that this preparation is useless in biliary colic, as the external application of opium leads to none of its active principles being absorbed, such as morphia and other constituents. Taking both the medicines in the prescription, *Ex 51*, he says that the Spt Ammonia mixture was for the stomach and the chances are that the Opium liniment was to relieve pain in the stomach (*Vol 9, p 341, l 38—p 342, l 8*). He is quite definite that the liniment is not an alternative, if the patient refuses morphia by hypodermic injections, as this would be wasted effort there are alternatives, e.g., morphia by the mouth, which he says might be given even during paroxysm. He admits that some doctors do prescribe liniment of opium for pain of any description (*ibid, p 356, ll 16-24*)

Dr Bradley would not prescribe this liniment at all 20 or 25 years ago when he first began to practise, it was used for massaging, for rubbing into sore, painful areas, and so forth, but experience has shown it is of no use, it is not absorbed. Taking the two prescriptions on *Ex 51*, the indications in his opinion are indigestion,—to relieve the pain of severe indigestion (*Vol 11, p 348, ll 27-31*)

The learned trial judge, it will be seen, has given a correct summary of the evidence regarding this prescription, *Ex 51*, in his judgment (*Vol 18, p 328*), and very fairly expressed the effect of this evidence by saying that while the medicines prescribed in it do not indicate biliary colic, they do not exclude it (*ibid, l 39*)

(2) *Re Prescription No 2 (7th May), Ex 51(a)*
(*Vol 1, p 277*)

This is the arsenic prescription, and the only one to have been written and signed by Dr Ashutosh Das Gupta, which he had to admit, but he protested to the end that it was not his. His earlier attempt, both in the Defamation Case and the Sripur Case, was to make out that Calvert had come on the 7th May and made this prescription, but when Calvert disowned it in his cross-examination in the present suit, he at once changed his case and strenuously sought to impute it to Nibaran Chandra Sen, which, if the defendants' own medical witnesses are to be believed, really meant a slander on the professional reputation of a doctor who was then dead. The desperate struggle which this witness makes in his present evidence to get round his former statements is indeed a shameless exhibition of perjury which would not be believed, if it was not a fact. Suffice it to say that I accept without hesitation, and for the reasons the learned judge gives, the finding of the trial court that Dr Ashutosh Das Gupta was the real author of this prescription (*Vol 18, pp 332-333*)

Be that as it may, it seems to be fairly clear on the medical evidence on both sides that whatever else it may be, this is not a prescription for biliary colic

It is just as well to begin with what Dr Ashutosh Das Gupta has to say about it. He agrees that the prescription contains "aloin" which aggravates diarrhoea, if the patient suffers from it. He agrees that it cannot be given to a patient suffering from biliary colic or diarrhoea, but adds that it can be given in malaria with constipation. The Kumar, he first says, had biliary colic with malaria on the 6th, 7th and 8th May, and he would accordingly

prescribe it for him (*Vol 16, p 251, ll 8-25*). A little later comes this further illuminating statement from him —

"If the second Kumar had diarrhoea and biliary colic on the 7th, I would not prescribe *Ex 51(a)* In diarrhoea, if he had diarrhoea, the prescription was unsuitable It would do no harm It would aggravate diarrhoea, might have done so—there is only mild purgative there I agree that 'the prescription would not be given to a patient suffering from biliary colic or diarrhoea', as I said (Then says)—It could be given in biliary colic 'Aloin aggravates diarrhoea', I still say that I would not give it in diarrhoea If a man wanted to aggravate diarrhoea, he would give it Dr Calvert and Dr Nibaran Chandra Sen certainly knew the action of aloin The second Kumar had gastric trouble on 6th, 7th and 8th May I do not know that Dr Calvert has said that he would not prescribe arsenic in gastritis or where intestinal irritation is present" (*ibid, p 254, l 30—p 255, l 2*)

Still later, this further prevarication —

"To Mr S P Ghose I said in effect that on the 7th May the Kumar had diarrhoea and biliary colic, pain of biliary colic, and Dr Calvert relieved these by his prescription—so far as I then recollected I do not say this now This statement, if I made it now, would not be true It would not be true as, to say one reason, I know that the medicine in *Ex 51(a)* cannot be given in diarrhoea" (*ibid, p 264, ll 18-24*)

And, then, again —

"Q—During the pain of biliary colic *51(a)* cannot be given?

A—No, unless there is some other complication

Q—Supposing a man suffering from chronic malaria has the pain of biliary colic, which would you treat?

A—Whichever is more acute

The pain of biliary colic I would call acute in such a case

Q—To tackle with that, you cannot give *51 (a)*?

A—No, I would give it if the man has malaria—the fever on with constipation Diarrhoea does not mean constipation I would not give *Ex 51(a)* to a chronic malaria patient who has diarrhoea and who is in the pain of biliary colic

That is the reason why my previous statement as to treatment and illness on the 7th was wrong" (*ibid, p 264, ll 26-38*)

Further on, he admits that he does not want to say that he sought to relieve the Kumar's biliary colic on the 7th by this prescription (*ibid, p 272, ll 9-11*), and he states later that the Kumar had biliary colic between 6 and 10 p.m. on the 7th May and the medicine in *Ex 51 (a)* was administered (*ibid, p 283, ll 5-6 and ll 15-17*)

It is not necessary to multiply further quotations from the evidence of this witness

Calvert was shown this prescription in cross-examination and asked if it was one for chronic fever or chronic malarial fever with or without enlargement of spleen and liver anaemia and constipation He would say that this was a general tonic pill, and judging from the amount of quinine

in the pill, it had been given for malarial fever or the after-effects of malarial fever. He was not prepared to express unqualified acceptance of the suggestion that quinine should be avoided in persons suffering from gastro-intestinal irritation, but personally he would not give quinine by the stomach in such case. He did not agree that small doses of quinine would produce symptoms of cinchonism in cases of gastro-intestinal irritation, nor that such symptoms were delirium, comatose condition, collapse and hæmorrhage (*Vol 2, p 216, l 27—p 217, l 7*). As regards the other ingredients in this prescription, this is what he said —

Q Do you agree that arsenic is contra-indicated when gastritis or intestinal irritation is present?

A Personally I should not prescribe it.

Q Aloin is a cathartic?

A Yes, a purgative.

Q So is euonymin?

A Yes.

Q And actions of cathartics are hæmorrhage, severe abdominal pain and collapse with profuse diarrhoea?

A No. You are talking of enormous doses" (*ibid, p 217, ll 22-31*)

In re-examination he denied that the quantity of arsenic, aloin and euonymin in the prescription would have any of the disastrous results suggested to him as the effects of cathartics, and doubted if the pill was ever absorbed, seeing that according to the prescription it was silver-coated and the patient's stomach was in an irritable condition (*ibid, p 224, ll 8-13*)

Looking to quinine, Major Thomas thought that it was probably given to treat fever, might be suspected malaria. Aloin and euonymin were purgatives, and he should guess the patient was constipated and needed a purgative. Nux Vomica and Arsenious acid were tonics. The doses of the different components were all within normal range, and he was definite that if these pills were given in accordance with the directions contained in the prescription, they could not cause any symptoms of arsenical poisoning (*Vol 12, p 337, l 30—p 338, l 14*). He agreed with Calvert that arsenic is contra-indicated when gastritis or intestinal irritation is present, and personally he would not prescribe it (*ibid, p 358, ll 710*)

Col Denham White also said that quinine and arsenic are common remedies for chronic malaria, and aloin and euonymin are purgatives, and he presumed that the doctor who prescribed this medicine had in his mind a case of chronic malaria, complicated by constipation. The doses were within prescribed pharmacopial limits, and if the pills were given as prescribed, they would not cause any symptoms of arsenical poisoning (*Vol 17, p 157, ll 2-10*). Asked if there was any relation between this prescription and the earlier one, *Ex 51* (the first prescription), he said that the doctor apparently gave *Ex 51* because he saw some distension and probably constipation, and then as it failed, he took the rather "horrible step" of giving these pills in *Ex 51 (a)* on the 7th when the patient probably had fever. Hence these "horrible pills"—he gave the purgatives and threw in arsenic and quinine (*ibid, p 158, ll 18-24*). As already stated, from Calvert's evidence, not from the prescriptions, he formed the opinion that the case was one of enteritis, and in this, he said, the pills which he called "horrible" would certainly not be given (*ibid, p 166, ll 13-15*)

In effect there is little difference between the evidence of Major Thomas and that of the plaintiff's expert Col MacGilchrist. This witness says that this prescription taken as a whole is a general tonic such as one gives in chronic malaria, particularly quinine and arsenic. He would not prescribe quinine for biliary colic, nor for gastric indigestion or flatulence. The doses of aloin and euonymin are in his opinion excessive, and would cause watery stools, griping and exhaustion. The first prescription, *Ex 51*, and this represent opposite ideas of what was wrong with the patient: the quinine and arsenic would both irritate the stomach instead of soothing it (*Vol 9, p 342, ll 11-26*). According to him, even therapeutic doses of arsenious acid may cause poisonous symptoms such as gastric irritation and rectal irritation and inflammation of the stomach and rectum and even blood in stools: this blood would be bright red blood in vomits or stools. Arsenious acid, assisted by quinine, is depressive of the heart and in toxic doses may cause collapse (*ibid, p 343, ll 12-17*). In cross-examination he admitted that taken as an ordinary tonic pill for malaria, its administration for two days, according to the prescription, would cause no harm, if there was no idiosyncrasy, but aloin and euonymin would cause purgation (*ibid, p 352, ll 33-38*). He added that he had no knowledge how many pills were actually administered, and had not been told about it (*ibid, p 353, ll 22-25*).

In Dr Bradley's opinion, *Exs 51, 51 (b), 51 (c)*—all point to stomach or gastric irritation, and in *Ex 51 (a)* the ingredients indicate profuse diarrhoea, which means that the entire intestinal tract was involved (*Vol 11, p 352, ll 14-19*). He would not prescribe it for intervals in biliary colic unless by coincidence the patient had indigestion (*ibid, p 352, ll 36-37*). If he had prescribed *Ex 51* on the 6th May, he would most definitely not prescribe *Ex 51 (a)*, because the latter is too irritating to the gastro-intestinal tract. He also states that arsenicum acid has been known to cause poisoning even in therapeutic doses (*ibid, p 353, ll 22-26*). Arsenic, he says, is more a tonic than a stimulant, and it is almost never given in stomach troubles because it irritates, but it is alternative (*ibid, p 360, ll 5-9*). He admits that the general form of the prescription would indicate malaria, but it is usual to modify the action of aloin and euonymin with belladonna. He does not consider the prescription to be a normal one, because it contains a big dose of quinine—too big for tonic and too small for malaria, and added to it are two strong purgatives,—it must have been given with a special idea at the back of the mind of the doctor (*ibid, p 360, ll 19-24*).

I think the learned judge was quite correct in thus stating the effect of the whole of the evidence regarding this prescription, *Ex 51 (a)* —

"There is thus no difference between the doctors as to this prescription—that it will suit chronic malaria, and will purge, and will irritate the stomach. Nobody says that it is a medicine for biliary colic, not even Dr Ashu who says that it will not suit in biliary colic" (*Vol 18, p 331, ll 25-28*)

(3) *Re Prescription No 3 (8th May), Ex 51 (c)*
(*Vol 1, p 285*)

This is Calvert's second prescription and of the 8th May, the last day of the Kumar's illness, which he agrees is suitable for acidity of the stomach, pain in the stomach, vomiting, diarrhoea and tenesmus being prescribed with "bismuth carb", it may be used in dyspeptic diarrhoea (*Vol 2, p 212, ll 32-34*). He is asked if there is any medicine in it for stopping "blood

stools", but avoids a direct answer by saying that there is no such medical term as "blood stools" (*ibid*, p 212, ll 35-37) When the question is varied—

"Q—If a patient is passing *watery motions with blood*, is there any medicine in this prescription for stopping the blood?"

he again side-tracks it and answers—

"A—It is not usual for patients to pass watery stools with blood. The late Kumar never passed watery stools with blood"

He adds, however, that had the Kumar done so, the treatment would have been adapted, if possible, to the cause of that condition (*ibid*, p. 213, ll 1-6), which, to my mind, involves an admission that this prescription contained no medicine for stopping blood Calvert goes on to affirm that the Kumar passed motions consisting of "blood-stained mucus with a little free blood"—this was either in the morning or in the middle of the day, and though earlier in his evidence he protested against being asked to describe the symptoms "21 years after the man's death" (*ibid*, p 209, l 27), he remembers enough to be able to add that he was told the Kumar had passed about a dozen such stools, and not merely that, he remembers also that he saw them, and "the blood was fresh and red in colour" (*ibid*, p 213, ll 6-12) "This symptom of blood-stained mucus", says the witness, "was an indication of the severity of the colic and the danger of the case and called for an immediate injection of morphia", and "the cause", he diagnoses, "was the great straining and spasm due to an impacted stone"

Calvert was challenged to quote authority that "fresh, red blood" might be due to any such cause in biliary colic, but all that he had to say was —

"I do not know of any authority on gall-stone diseases in India, but I am not prepared to accept the authorities of other countries" (*ibid*, p 213, ll 19-20)

He referred to three or four cases within his personal experience, where, however, he discovered blood in the interior of the intestine *only after post mortem examination* (*ibid*, p 213, ll 20-27) He could cite neither authority nor experience to show that blood in stools occurred *in life* in a case of biliary colic He had to agree that in biliary colic there is usually marked constipation, and blood stools are not generally a symptom (*ibid*, p 214, ll 1-15) He gave his reason for not trying to stop the passing of blood—for, says he —

"I was not concerned in stopping the hæmorrhage which in itself was trifling, but in *attacking* the cause of all his troubles, when the hæmorrhage would naturally cease" (*ibid*, p 214, ll 34-36)

Was he attacking the "cause" by his stomach-soothing mixtures? One feels sorry for a physician of such eminence as Calvert reducing himself to this level!

It may be stated that in view of Calvert's evidence and of Dr Ashutosh Das Gupta's statement in the Sripur case to the effect that in the early hours of the morning of the 8th May, the Kumar's pain in the abdomen increased and Calvert was at once sent for, probably through Mukunda (Ex 394, Vol III, p 19, ll 16-19), a statement which was put to him in this case (Vol 16, p 253, ll 25-31), Mr Chatterjee made a suggestion in this court that this prescription, Ex 51 (c), must have been obtained from Calvert from his house and had not been made by him after seeing the patient But having regard to the fact that the suggestion was not put to

Calvert in cross-examination, I am not sure that Mr. Chatterjee is entitled to make any such case

Major Thomas thinks that *Ex 51 (c)*, like the Spt Ammonia mixture (*Ex 51*), Calvert's first prescription, was for the treatment of dyspepsia. It contains sodium bicarbonate which he says might have been given to neutralise acidity or to relieve sickness, nausea or vomiting. The prescription, in his opinion, did not indicate a highly irritated stomach (*Vol 12, p 341, l 35—p 342, l 11*). He agrees with Calvert rather half-heartedly that this prescription is suitable for acidity of the stomach, pain in the stomach, vomiting, diarrhoea and tenesmus. He says that it is "a very weak mixture", "on the whole it tends that way", "it is much too weak for tenesmus". He adds that he does not doubt the sincerity of Calvert's conviction that it would be suitable for these (*ibid, p 349, ll 4-10*).

Col Denham White is simply asked in examination-in-chief if it is a suitable medicine for an interval of biliary colic. He answers "I think it would be sedative to the stomach" (*Vol 17, p 158, ll 28-29*). As already stated, he calls this and *Ex 51* "commoner garden medicines", and admits that they are not prescribed only in intervals of biliary colic (*ibid, p 166, ll 32-33*).

Col MacGulchrist very clearly explains the effect of the various ingredients of this prescription. He agrees with Calvert to the extent that it is suitable for acidity, pain in the stomach and vomiting, but says it is not so far diarrhoea and tenesmus (*Vol 9, p 343, ll 39-41*). The dose of bismuth carb is very small and it is entirely for the stomach. Pulv Tragacanth Co is only a sweetening and supporting agent to keep bismuth in suspension. The cajuputi and peppermint water are volatile oils which are sedatives and prevent spasm of the stomach. Bismuth carb is insoluble and forms a mechanical coating inside the stomach which it thus protects from irritation. The magnesium carbonate and sodium bicarbonate neutralise the acids in the stomach and so prevent irritation from the acids. He would not prescribe this medicine for biliary colic (*ibid, p 344, ll 1-15*). In cross-examination he says that bismuth carb is given in mild diarrhoea but in enlarged doses. In 10 gram doses it will not be sufficient even to coat the lining of the stomach. Supposing tenesmus was present, and the medicine relieved the stomach, he thinks it would be wholly ineffective to lessen the tenesmus (*ibid, p 357, l 34—p 358, l 10*).

Dr Bradley's evidence is to the same effect. He does not believe that this prescription will have the slightest effect on vomiting and diarrhoea, but may have some effect on acidity, so far as 10 grs of sodi bicarb goes. The two oils, oil of cajuputi and peppermint water, would tend to relieve spasms a bit, but the dose in every case is much too small to be of any use in anything severe. Bismuth carbonate is supposed to coat the mucus membrane of the stomach and thus to protect it from irritation, but 10 grs would not go very far (*Vol 11, p 348, l 36—p 349, l 8*). The prescription is for indigestion, but it does not indicate anything very serious. If a doctor says that in cases of biliary colic he prescribed *Exs 51* and *51 (c)* for the intervals, the witness would not agree (*ibid, p 353, ll 18-20*). In cross-examination he says that *Ex 51 (c)* is a carminative, entirely sedative, but not a stimulant. Asked if sodi bicarb in the prescription might have been given to counteract vomiting or vomiting tendency, he says that 10 grs dose in itself would not prevent it, but the prescription taken as a whole would help, if retained (*ibid, p 364, ll 21-26*).

The learned judge, it appears again, has given a correct summary of the medical opinions on this prescription, which will be found in *Vol 18, p 341, ll. 30-40*

(4) *Re Prescription No 4 (8th May)—Ex 51 (b)*
(*Vol. 1, p 279*)

This is a prescription by Dr Nibaran Chandra Sen, and there are four different items in it. The last one, as already pointed out, is not a prescription proper (*Vol 9, p 347, ll 14-15*), but, in the language of Mr Chaudhuri, an "armoury" of several drugs to be used independently. Dr Sen being dead, his opinion is not available.

As regards items (i), (ii) and (iii), it is generally agreed that these are mere aids to digestion.

Thus Calvert says that (i) is for assisting digestion of milk, and (ii) should assist digestion and may be used to correct irregularities arising from morbid and irritating conditions of the stomach (*Vol 2, p 216, ll 13-18*).

Major Thomas says likewise that (i) is added to milk to make it more easily digestible, and (ii) also is to aid digestion. Both would be suitable for intervals of biliary colic (*Vol 12, p 342, ll 14-17*). As regards item (iii), Pep Powder fresh, he does not understand what it means, and there is no dosage here (*ibid, p 342, ll 25-26*).

Col Denham White was not asked anything about this prescription.

Col MacGilchrist says that both (i) and (ii) should go together. Both are for purely gastric indigestion and would not be prescribed in a case of impacted gall-stone. Citrate, he explains, is usually added to milk to form a fine curd instead of a coarse curd, and pepsin is a substance which the stomach produces to digest protein and is given as an aid to the stomach to perform its normal duty (*Vol 9, p 346, ll 1-6*).

Dr Bradley gives the same opinion. Item (i) is to provide easily assimilated food—usually given in gastric irritation, and item (ii) is also to aid gastric digestion. Nobody will prescribe either in a case of impacted gall-stone, unless by coincidence the patient has severe indigestion, but it is not a treatment of gall-stone. There is no cross-examination on this.

None of the doctors is asked if the soda citrate with milk or the pepsin could be given to a patient in a state of collapse.

As regards the "armoury", Col Calvert agrees that the first three items in it, "Atropine Tab", "Strychnine Tab" and "Digitalis Tab" are cardiac stimulants (*Vol 2, p 222, ll 3-5*).

The only other evidence on this is that of Col MacGilchrist. In examination-in-chief he gives a fairly full explanation of the use and action of the different items. Atropine tablets, gr 1/100 each, are used usually for hypodermic injection combined with morphia tablets, the object of atropine being to protect the heart against the action of morphia. Morphia is used to alleviate pain due to whatever cause, and such pain, he admits, usually occurs in biliary colic also. As regards the strychnine tablets, 1/30th of a grain, he says it is a very big dose, specially for hypodermic injection, and particularly after the quinine and arsenic pills. The dose by the mouth is 1/64th to 1/16th of a grain, and a hypodermic dose would be much smaller. Action—stimulant of the nervous system. The quinine and arsenic pills in *Ex 51 (a)* contained strychnine, and 12 pills contained almost a fatal dose.

The point is that strychnine here in this prescription, item (v) of *Ex 51 (b)*, is a very large dose. Digitalis tablets, 1/100th gr., are for hypodermic injection, the action is entirely heart-stimulant. Ether pure, half an ounce, by hypodermic injection, would be a suitable medicine for collapse. By inhalation, just as chloroform, it will relieve convulsions and spasms. He points out that no directions are given in this list of drugs as to how they are to be administered, or how many are to be supplied. It only gives the dose of each (*Vol 9, p 350, l 30—p 351, l 12*). In cross-examination this is what Mr Chaudhuri put to the witness —

"Q—Would this (*sic*) right in getting these tablets for an emergency?

A—Yes

Q—To provide against collapse or to treat a collapse?

A—Yes, some of them

Q—Take the item "strychnine tablet" A doctor using hypodermic syringe could use one half of that?

A—Yes" (*ibid, p 360, ll 6-12*)

(5) *Re Prescription No 5 (8th May)—Ex 51 (c)*
(*Vol I, p 281*)

This is Calvert's third and last prescription and contains two medicines, (i) a spirit ether mixture, and (ii) opium pills. According to the doctors, the first is for collapse, and the second is said by the defendants' witnesses to be a substitute for morphia injection, while the plaintiff's doctors say that it is a medicine to check diarrhoea.

Calvert admits that item (i) is a stimulant mixture given when collapse commences. As regards item (ii), it was put to him if it was a medicine for stopping hæmorrhage. He first tried to avoid an answer by saying that in this particular case the hæmorrhage as hæmorrhage was of little significance except as pointing to the danger within, and then on the question being repeated, said—

"A—Yes it was—for if retained, it would check the spasm and relieve the cause of the hæmorrhage which would then cease of itself."

He did not agree that opium being a cardiac depressant was contra-indicated in case of collapse (*Vol 2, p 214, ll 17-30*). Later, on being questioned whether any of the medicines in his three prescriptions were prescribed for the paroxysm in biliary colic, he wanted to convey that the stimulant ether mixture and the opium pills were given as "substitutes for the real treatment" (*ibid, p 215, ll 32-35*). He was asked if he had any authority for saying this, and if he thought that this medicine taken by the mouth could remove the stone. His answer was

"A—I have previously stated that I am not aware of any medicine which would remove gall-stones. For this a surgical operation is necessary. No doubt, we hoped, and that is the utmost we could hope for, that the stone would disengage itself and pass onwards or backwards into the gall bladder with the subsidence of the colic" (*ibid, p 216, ll 1-11*)

In re-examination he tried to explain that by "the real treatment" he meant morphia administered hypodermically, as under such administration one was certain the patient received the full dose of morphia (*ibid, p 223*,

II 32-37). Earlier, he said in cross-examination that the prominent symptom in an attack of biliary colic for the relief of which treatment was indicated was pain, and the drug indicated opium, and he referred to opium being given to the Kumar by this prescription. It was put to him on the authority of Burney Yeo (which he was prepared to accept as good authority on biliary colic in 1909), that morphia and opium had the effect of diminishing the flow of bile, and that therefore in such cases chloroform inhalation was better or hydrate of chloral given per rectum. He agreed with the statement as to the action of opium on bile secretion, but said that when a fatal issue was at stake, the secretion more or less of a few drops of bile was a matter of indifference (*ibid*, p 218, II 8-29).

The effect of Calvert's evidence seems to be this: the spirit ether mixture is a stimulant for collapse, while the "Ext Opium" pills is a substitute treatment for paroxysm in biliary colic, which by checking the spasm might relieve the cause of hæmorrhage. Opium might no doubt affect the secretion of bile or depress the heart in a state of collapse, but in extreme cases risks must be taken.

According to Major Thomas, this prescription indicates faintness or collapse, but not necessarily that it is severe. The first medicine in it has nothing to do with diarrhoea, while the second may or may not be given to treat diarrhoea, but there is no indication of profuse diarrhoea (*Vol 12, p 341, II 19-28*). Item (ii) in this prescription could be given instead of morphia and atropine in injection.

In cross-examination he tried to resist the suggestion that "Extract Opium" is given to check diarrhoea —

Q — Kindly look to the second prescription on it, Ext Opium and so forth. Do you know that Extract Opium is given to check diarrhoea among other things?

A — It might be given, but I do not think it is feasible.

Q — Belladonna — would that have the effect of checking tenesmus?

A — It might.

I am very familiar with Hale White's *Materia Medica*. I agree with this:

'Opium is invaluable for stopping many varieties of diarrhoea', but I would use it for a temporary purpose, such as going to pictures. In other words, it is a most unscientific way of stopping diarrhoea.

Q — Was that opinion in vogue in 1909?

A — I cannot say what the opinion was in 1909, but I am inclined to think that it was "the same, as the principle is that in diarrhoea you do not stop but eliminate" (*ibid*, p 349, II 14-27).

As regards item (i), he agrees with Calvert that it is a stimulant given when collapse commences, but adds that it might be given in other conditions also: what the "other conditions" are, he was not asked in re-examination to explain (*ibid*, p 349, II 28-30).

Col Denham White also said that item (i) in *Ex 51(c)* does not indicate diarrhoea at all (*Vol 17, p 158, II 13-15*). As regards item (ii), it was given to relieve straining at stool or griping, and if the patient refused hypodermic injection for pain of biliary colic, it would be a substitute only as a second best (*ibid*, p 159, II 1-4).

Col MacGilchrist says that the Spirit Ether mixture is a prescription for collapse, for a failing heart, and represents a later stage of the treatment than Calvert's previous prescription, *Ex 51(e)*—(the mag carb mixture) (*Vol 9, p 345, ll 33-34*) The Ext Opi pills, in his opinion, probably indicate that they were given to check diarrhoea and tenesmus or griping (*ibid, p 344, ll 23-24*)

Dr Bradley is quite definite that item (i) is for collapse, and item (ii) would be given to control severe diarrhoea. Taking the two prescriptions together, his idea is that the diarrhoea was so extreme as to produce collapse, or the condition which called for the second prescription on *Ex 51(c)* would indicate that the patient had collapsed as the result of diarrhoea, or the loss of fluid as in cholera. The condition indicated by the second prescription is the cause of the collapse. He noticed from the druggists' serial numbers that between the time of *Ex 51(e)*—Calvert's mag carb mixture—and this prescription, the chemist had only put up three other prescriptions, so that the collapse must have occurred fairly soon after writing up *Ex 51(e)*, assuming that the chemist had a busy day (*Vol 11, p 349, ll 14-30*). He would not prescribe either this or any of the other two prescriptions of Calvert for intervals in biliary colic (*ibid, p 352, ll 36-37*). In cross-examination he stated that the ingredients in the first prescription did not indicate any bowel condition at all (*ibid, p 363, ll 36-37*). He was further asked, supposing the patient had refused hypodermic injection and he had pain, if it would be reasonable to prescribe this opium and belladonna, and he said, "logically it would be" (*ibid, p 364, ll 31-35*).

The learned judge has again correctly summarised the evidence on this prescription in *Vol 18, p 342, ll 18-28*.

(6) *Re Prescription No 6 (8th May)—Ex 51(d)*,
(*Vol 1, p 283*)

This is the very last prescription for the second Kumar and is by Dr Nibaran Chandra Sen, containing three items. The first appears to be a liniment of soap and mustard, to be rubbed all over the body with ginger powder. The second is a liniment of chloroform and belladonna with directions to be applied over the stomach. The third is not a medicine, but a kind of cloth inter-woven with small pieces of sponge, rendered water-proof on one side, which when moistened with water is used as a poultice.

Calvert was asked if item (i) was for collapse and comatose condition, and he said this was an endeavour to restore a failing circulation. As for item (ii), it was a medicine to relieve any local pain, and it was probably given to relieve pain of the stomach, as these were the directions in the prescription (*Vol 2, p 216, ll 20-25*).

Major Thomas is of opinion that the "lnt saponis" prescription does not necessarily indicate muscle cramps, and by no means indicates that the patient must have been suffering from arsenic poisoning. Asked if it is commonly used in cholera cases, his answer is that he does not see why it should be, though he can imagine it is possible to use it for rubbing the limbs in cholera (*Vol 12, p 342, l 28—p 343, l 4*). As regards the chloroform belladonna liniment, he thinks that if the case was one of biliary colic, it might have been applied or rubbed in the abdomen to relieve pain. The third thing in the prescription is spongiopiline, being just an absorbent to apply a liniment over a skin surface (*ibid, p 343, ll 8-15*).

Col Denham White said in examination-in-chief that the liniment containing ginger powder was prescribed to relieve cramps or to increase warmth

of the limbs. Occasionally he had cholera patients rubbed with ginger, but cramps occurred also in biliary colic, and in support of this statement he cited a passage from Sajon which runs thus — "Two cases suffered from cramps, which were probably connected with disturbance in the celiac ganglia and the abdominal sympathetic." He took it that these were cases after successful operation, but said that the point was rather obscure (*Vol 17, p 159, ll 16-19 and ll 5-13*)

Col MacGilchrist says that item (i) is generally used in cholera for cramps of the muscles of the legs. Such cramps occur also in acute arsenical poisoning, and are due to loss of fluid from the body. He does not think anybody would ever prescribe it in gall-stone, there is no loss of fluid in gall-stone to cause cramps (*Vol 9, p 346, ll 9-15*). In cross-examination he repeats that this prescription is not for collapse but for cramps, and is typically used for cholera cramps. Cramps do not occur after a shock, but only in case of loss of fluids, they are due to the fact that the muscles are de-hydrated (*ibid, p 360, ll 14-19*). As regards item (ii), he says it would be useful in pain on the stomach, which and the rectum are the two parts specially irritated and inflamed by arsenic. This also he would not prescribe in gall-stone, in which the stomach is practically unaffected. In biliary colic, he points out, the pain is in the right hypochondrium, that is, in the region below the ribs on the right side. The pain of biliary colic radiates towards the back and the right shoulder, and is not over the region of the stomach (*ibid, p 346, ll 17-32 and p 358, ll 11-21*). He was asked in cross-examination if in biliary colic it would be wrong to apply a liniment over the stomach, and his answer was as follows —

"A — Yes, the liniment should be over the right hypochondrium. I would write on the prescription "To be applied on the right hypochondrium", if necessary, and I would show the part to the relatives and mark it, if no doctor is present, and after explaining, would write "to be applied as directed" in the prescription.

It would be wrong to say "to be applied over the stomach", even if an attending physician is present."

The third item in the prescription, spongiopiline, he explains, is something like felt, but white, used by surgeons, usually for hot fomentations, soaking it in hot water, and applying it to the painful part, and covered over with waterproof sheets to prolong its action as a fomentation (*ibid, p 347, ll 8-11*).

Dr Bradley says that the first prescription is for cramps in limbs—commonly used in cases of cholera, and the second is for pain and discomfort in the stomach. He would not prescribe either in a case of impacted gall-stone (*Vol 11, p 350, ll 30-36*). In cross-examination it is put to him that this prescription is used to restore circulation, when any massage is required to be done for the purpose, and he says that it is given to relieve the contraction and painful spasm in cholera. He does not suggest that because there was this prescription, there must have been symptoms of cholera, but he adheres to the statement that it is a prescription commonly used in cholera (*ibid, p 364, ll 5-15*). He agrees that the chloroform and belladonna prescription is a proper one for relieving pain in the stomach (*ibid, p 365, ll 1-2*).

The learned judge's summary of the evidence regarding this prescription also appears to be fairly correct. (*Vol 18, p 342, l 29—p 343, l 16*)

STORY OF POISONING—HOW FAR A MATERIAL
PART OF PLAINTIFF'S CASE

Having regard to the divergent cases made by the parties,—biliary colic on the one hand and arsenic poisoning on the other,—I feel bound to repeat that the prescriptions produced by the plaintiff, which were admittedly all the prescriptions made for the second Kumar, cannot but be of the utmost significance, and these must doubtless be read with the telegrams, copies whereof were again produced on behalf of the plaintiff. In one sense the question as to what the Kumar died or was taken to have died of, may be said to be immaterial, except perhaps in so far as it may affect the probability of the story told on one side or the other. In other words, while on the one hand the chances of a patient passing into a condition which may easily be mistaken for death may be supposed to be less in a case of biliary colic than in that of arsenical poisoning, it may be said, on the other, that a patient having had a collapse on account of arsenic poisoning is more likely to recover from the action of rain and open air than one suffering from biliary colic. Counsel for the plaintiff in fact put the following question to Col MacGilchrist —

“Q —Suppose the patient had a collapse on account of arsenic poisoning and his body had been removed to the cremation ground and all this in Darjeeling, fully covered up from head to foot, could open air and a touch of rain bring him back to consciousness?

A —If the dose was not fatal, time alone would do so. It is only a matter of time.” (*Vol 9, p 347, ll 20-25*)

It does not appear that there was any cross-examination on this point. Dr Bradley was similarly asked if open air or the touch of rain would have the effect of reviving a patient who had had a collapse on account of arsenical poisoning, and his answer also was, “Not of itself. Time, if it was not a fatal dose, would revive him” (*Vol 11, p 354, ll 29-33*). I do not find any cross-examination of this witness either on this part of his evidence.

Mr Chaudhuri suggested before us that the story of arsenic poisoning was an invention of the plaintiff made for a definite purpose, namely, to account for the presence of a cyst under his tongue and explain away his defective and halting manner of speaking Bengali, and above all, to furnish a basis for his case of alleged loss of memory. As regards the cyst and the alleged difficulty of speech, Mr Bankim Mukherji, junior counsel on behalf of the plaintiff, stated to us (on the 15th December, 1938) that the plaintiff would not make the case that any difficulty of speech or any lesion or morbid condition of the tongue was caused by or resulted from any administration of poison. Whether any inference should be drawn against the plaintiff from the fact that he was abandoning in this court a case he is supposed to have made at the trial is another matter, but this shows quite clearly that neither the cyst nor the impediment in speech was a circumstance which necessitated a false case of poisoning being made. So far as loss of memory is concerned, Mr Chaudhuri admitted that in the present imperfect state of scientific knowledge on the subject it could not be asserted with confidence that such a phenomenon was theoretically impossible. The only question was whether the alleged loss of memory was or was not a fact, however it might have been caused. Personally speaking, I am not at all satisfied that it was essential for the plaintiff to have made a story of arsenical poisoning, if it was not a fact, in order to bolster up any material part of his case.

Nor am I prepared to accept the other suggestion that the story of poisoning was an after-thought on the part of the plaintiff. In the plaint, it will be observed, the plaintiff made a definite allegation of administration of poison in the course of his treatment at Darjeeling, and further stated that as a result thereof, "his memory of the past was almost effaced" (*Vol 1, p 120, paragraph 2*). In his memorial to the Board of Revenue, *Ex J*, (*Vol III, p 92*), he did not expressly mention poisoning as the cause of his suspected death, but merely referred to the fact of his being carried to the cremation ground when life was not yet extinct, and to his body being picked up from there and carried away by some sannyasis, and he also alleged "a complete forgetfulness" for some time "of everything connected with the previous years of his life owing to this crisis in his life" (*paragraph 7*). Later on, however, speaking of his being recognised by his relations and others as the second Kumar on his return to Jaidebpur, notwithstanding that his voice was "affected", he definitely stated that this defect in the tongue was due to arsenic poison at Darjeeling (*paragraph 14*). The defendants' own evidence shows that the story of poisoning was actually in circulation at Jaidebpur from quite an early stage after the declaration of identity by the plaintiff, and this will appear also from the proceedings in the Defamation Case of 1921 in which this story was largely canvassed. As is pointed out in the judgment of the High Court in this case, *Emperor v Purna Chandra Ghose*, (*28 CWN 579 at p 583*), the trying Magistrate, as a result of considering the prescriptions given for the treatment of the Kumar, came to the conclusion that none of the prescriptions were for biliary colic, and after considering the Kumar's symptoms, he diagnosed these as symptoms of arsenical poisoning resulting from some medicine which he concluded from the evidence had been prescribed and given to the Kumar by the complainant Dr Ashutosh Das Gupta. If it be supposed that this was a false story first started at that time and was the origin of the case which the plaintiff afterwards came to make, there is no explanation forthcoming as to how the plaintiff could have derived sufficient knowledge or information of the events at Darjeeling at this stage to be able to concoct such a story which was not only plausible but even possible.

For the purpose of discrediting the plaintiff's case of poisoning, Mr Chaudhuri relied upon his cross-examination of the plaintiff on the point which may be set out in full

"Q—When did you know you were poisoned?

A—I never mentioned poison. Doctors said that arsenic poisoning may have such effects. This I heard after my arrival at Dacca. I do not remember in what month or year.

Q—You do not want to say that anybody tried to kill you by poison?

A—I can't say. I do not know. I can't name a single doctor who told me about the effects of arsenic. From the state of my body I can conjecture what had happened—that there was an attempt to poison me and kill me. The sannyasis did not tell me. They did not give me an emetic to make me vomit it out. I told this to nobody. I did not tell this to Jyotirmoyee. If anybody says that I said so, he is wrong. No witness on my side said that poison had burnt my tongue. I told nobody that poison had burnt my tongue. The sannyasis did not tell me so. Nobody told me what poison it was.

Q—You know “arsenic”?

A—It is a poison

I did not see the prescriptions made for me I did not tell anybody that I spat out the poison and it burnt somebody's cloth I did not spit out the poison The word “arsenic” is English Its Bengali is *bish* I can't say what *bish* I do not know *shankha* (white arsenic) or *sheko bish* (arsenic poison)

Q—Do you know that arsenic does not burn?

A—No

Q—It produces no burning sensation in the chest?

A—I don't know

Q—Directly you took the medicine, your chest burnt?

A—Can't say

I got restless after taking it, and my chest burned and I grew restless I got these a little after My chest burned first, and then I got restless and I said “Ashu, what have you given me?”

Q—Did you tell anybody that poison altered your voice?

A—This I understand myself, but I did not say that in the memorial”
(Vol 4, p. 161, l 21—p. 162, l 17)

Further on—

“Next day (i.e. 7th May) I was not so (i.e. unconscious), but at night Ashu doctor gave me medicine and I felt the burning sensation in the chest three or four hours after and said “Ashu, what have you given me?” Next day I had blood stools and after that I became unconscious When I got the burning sensation I felt vomiting tendency and I screamed and I said “Ashu, what have you given me?” Next day, as I said, I had blood stools”
(*ibid*, p. 170, ll 8-13)

Again,

“I noticed the nodule underneath my tongue when I regained consciousness Directly I talked to people and felt my tongue was heavy I talk as usual, but there is *atka atka* (a certain impediment) The *sur* (tone) is not distinct I felt that my tongue was heavy I did not feel any difference in pronunciation or voice” (*ibid*, p. 171, ll 8-14)

The plaintiff's statement in examination-in-chief may be also given in full —

“At Darjeeling I was keeping well Then I got ill I got ill 14 or 15 days after my arrival at Darjeeling It commenced by my having flatulence at night It was towards the end of the night I spoke to Ashu doctor then about it—that night In the morning he brought a European doctor He prescribed a medicine I took it that day (6th May) Next day also I took it, it did me no good Then at night—(when read over, adds ‘at 8 or 9 P.M.’)—Ashu doctor gave me a medicine He gave it in a glass (shows a small glass) It did me no good As I took it my “chest” burned and I grew restless These symptoms appeared 3 or 4 hours after I took the medicine And I began to scream (*chhikkur parte*

laglam, a Bhowal Bengali expression). No doctor came that night. Next morning (8th May) I passed blood stools—the motions were in quick succession. My body got feeble. Then I got unconscious. I do not know whether any doctor came to me, till that moment.

What happened after I became unconscious I do not know”
(*ibid*, p 101, ll 13-27)

Speaking for myself, I do not see anything in the plaintiff's cross-examination which at all tends to shake the account he gives. The account stands as a simple and consistent story with no inherent improbability in it and with no attempt to embroider it with false details which he could not speak to from personal knowledge. It gives his present recollection of facts which were within his own experience up to the moment he lost consciousness. He describes the symptoms as they occurred, without seeing the prescriptions. He suspects poisoning, but this is only a conjecture from the state of his body. Quite honestly he says he was not in a position to assert that anybody tried to kill him by poison. He never mentioned poison, which means, he never complained of poison at the time Dr Ashu gave him the potion which produced the effects he describes. Much less did he mention arsenic himself, but only learnt from doctors afterwards that arsenic poisoning might have such effects. He cannot name any of the doctors who told him so, nor does he remember in what month or year he heard it, but that does not mean that his statement must be false. He told nobody that poison had burnt his tongue or that he had spat it out. He does not know that “arsenic does not burn”, nor that it “produces no burning sensation in the chest”. He is content merely to state that his chest did burn, and he got restless as well, and vomited, and that he screamed in pain, but no doctors came, a fact which, as will be seen later, received unexpected confirmation from Satyendranath Banerjee himself as also from Dr. Ashutosh Das Gupta, though this had to be wrung out of them after strenuous resistance on their part.

Mr Chaudhuri suggested, before us that the first case which the plaintiff made regarding the poison was that it was a corrosive poison, and that this case persisted, right through till the plaintiff came into the box, when Mr Chaudhuri for the first time put it to him, that arsenic was a metallic poison and could not corrode. After this, he said, that case was dropped. There is obviously nothing in this point. Whether arsenic does or does not burn, the fact is incontrovertible that from the first moment a case of poisoning was made, it was poisoning by arsenic. Mr Chaudhuri referred to the evidence of some witnesses, on the plaintiff's side who were examined before the plaintiff himself and who no doubt told a story of a poison which had produced marks of burning on the cloth and the skin of one Sarif Khan, an up-country Muhammadan orderly of the Bhowal Raj, who had admittedly gone to Darjeeling with the second Kumar. It will be seen, however, that these witnesses did not purport to give the version of the plaintiff, but merely related a story which they heard or overheard Sarif Khan narrating to some other persons, —neither Sarif Khan nor any of these persons having been called as witnesses in the case.

The first of such witnesses is Ananta Kumari Devi, brother's widow of Akshoy Roy, the man who is said to have been sent out in quest of the second Kumar, and one of the earliest witnesses of the plaintiff to be examined on commission (*Vol 1, pp 464-504*). She says that, shortly after the return of the Darjeeling party to Jaidebpur, she overheard a conversation between

her husband and Sarif Khan, in the course of which Sarif Khan is supposed to have told a story which is thus recorded in the evidence —

“A poison or something like that was administered to Mejo Karta (meaning the second Kumar), saliva began to ooze out of his mouth; just see it had fallen on my cloth please look here, my cloth has been burnt, a blister has formed on my thigh by its falling upon it; saying this, he showed a burnt place in the cloth and the blister”

The witness adds—

“I also saw that from a place outside their view”
(*ibid*, p 471, ll 24-28)

She elaborates the story in cross-examination (*ibid*, p 491, ll 9-34)

The next witness is Mokshada Sundari Devi, mother of two of defendants' important witnesses, Saibahini (on commission) and Phani Bhusan Banerjee, D W 92, who reports a similar conversation of Sarif Khan with Rani Satyabhama Devi. This is the account she gives of what Sarif Khan told the Rani —

“Satya Banerjee was present there. Ashu doctor administered the medicine to him. Some portion of the medicine the second Kumar took and some portion he sputtered away. With this sputtering of the medicine the Kumar said, ‘What have you administered? What have you administered?’ Some portion of that medicine fell on the Kumar's bed, and as Sarif Khan was in front of it, some portion fell on the cloth he was wearing and on his garment”

The witness adds, “Sarif Khan showed his cloth and garment which seemed to bear marks of scorching at places” (*Vol 2, p 11, ll 22-30*). She speaks only about stains on Sarif Khan's cloth, and not of any marks of scorching on his skin.

Another witness of the plaintiff, also examined on commission, referred to in this connection, is Satya Dhenu Ghosal, a barrister-at-law and a member of the Calcutta Bar, whom Mr Chandhuri spared by saying that he was not a lying, but only a “partisan” witness. His evidence is that the plaintiff told him that he had been poisoned and that was how he had come by the injury to his tongue.

“Q—Do you mean that in order to eradicate the poison somebody had to perform a surgical operation on his tongue?

A—He said that the injury came to be there due to poison, there was no operation.

Q—That is, that the poison itself, by its action had corroded his tongue?

A—I suppose he meant that when he said that it was due to poison.

Q—You understood from what he said that the action of the poison on his tongue had caused this injury?

A—Yes, I understand that from what he said.”
(*Vol 4, p 9, ll 6-18*)

This is not evidence that the plaintiff had told the witness that his tongue had been corroded by the poison, but is only the witness's interpretation of what the plaintiff had told him.

The next witness is Surendra Mohan Adhikari, P W 2, who says that on his asking the plaintiff why his speech was indistinct, the plaintiff said. "Some medicine was administered to me and that is how my tongue is like this" From his impression of what the plaintiff said, the witness could not say that if any of the other witnesses of the plaintiff had said that the plaintiff's tongue was corroded as the result of the poison, it would be untrue (Vol 4, p 35, ll 34-41) Another witness mentioned by Mr Chaudhuri, Radhika Mohan Goswami, P W 4, merely says "I heard it said that poison had thickened his tongue" (Vol 4, p 51, l 3)

One really fails to understand how on the strength of this evidence it is possible to discredit the plaintiff's story of arsenical poisoning, on the ground that he had made a different case earlier. There is absolutely nothing in the statements of the witnesses referred to by Mr Chaudhuri which shows that the plaintiff had told any of them about a corrosive poison. I am not sure that the tale said to have been told by Sarif Khan is evidence at all in any case I should not be prepared to accept this as a part of the plaintiff's case merely because the story is repeated through the mouth of some of his witnesses. It is perfectly clear, in any view, that there is no basis for the suggestion that Mr Chaudhuri by his cross-examination caused a change in the plaintiff's case, for, before Mr Chaudhuri put it to him that arsenic was a non-corrosive poison, he had in fact already denied having told anybody that poison had burnt his tongue. I may perhaps add what is only common sense to suppose that if the plaintiff was minded to make a false case, this would be all the more a reason for his adhering to a uniform story throughout.

It may be pointed out in this connection that Jyotirmoyee Devi in her cross-examination said —

"I did not hear of the name of the poison. It is not a fact that we invented the story of Sarif Khan and of arsenic" (Vol 8, p 365, ll 29-30),

upon which Mr Chaudhuri put her a question which, as I read it, really implies that arsenic was the original story,—quite the contrary of his present suggestions.

"Q—And having now grasped that arsenic does not burn or injure the tissues, you are now giving up that tale?

A—It is not true" (*ibid*, ll 31-33)

In any event, it seems to me unthinkable, having regard to the fact that arsenic poisoning had been definitely alleged in the Defamation Case, that the plaintiff, though, as I hold, he cannot be made responsible for all that the defence might have said in that case, should be making a different case in the present suit, particularly as he seeks to rely so strongly on the very prescriptions on which the charge of poisoning was based in that prosecution.

CYST ON THE TONGUE

I might perhaps add a few words here regarding the cyst. It is admitted that the second Kumar had none, while the plaintiff has a small growth of about the size of a split pea under the tongue. Mr Chaudhuri referred to the evidence of two of plaintiff's earlier witnesses to show that the case at that stage was that this growth had been caused by poison. One of these witnesses is Surendra Mohan Adhikari, P W 2, already referred to, who merely stated—"I asked him (plaintiff) why his speech was indistinct. Plaintiff

said 'Some medicine was administered to me and that is how my tongue is like this' " (Vol 4, p 35, ll 33-35) There is nothing said about the cyst. The other witness is Bepin Behari Chakrabarty, P W 1, from whom Mr Chaudhuri elicited only this in cross-examination —

"Q—He (plaintiff) said that this difficulty of speech was due to the fact that he was poisoned?

A—Yes, he said so

He said that poison had numbed the tongue. He did not say whether the poison had burnt his tongue. I did not hear that the poison had produced a tumour. He said that the poison had thickened the tongue " (Vol 4, p 30, ll 8-14)

Here, again, there is no statement that the cyst had been caused by the administration of poison. Plaintiff's own evidence on the point has been already quoted, which is to the effect that he noticed a nodule underneath his tongue when he regained consciousness and felt that his tongue was heavy (Vol 4, p 171, ll 8-9 and 11-13). Col MacGilchrist was merely asked in cross-examination about the possible period of growth of this tumour, and he suggested that if it was a gumma, it might take two or three weeks, but if it was cystic, which probably it was, it would take 5 or 10 years (Vol 9, p 360, l 26—p 361, l 8). His statement in examination-in-chief was that a growth like this would affect speech and affect tone also (*ibid*, p 350, ll 6-7). Dr Bradley, again, simply stated that the cyst would affect articulation, but not voice sufficiently (Vol 11, p 354, l 28). In this state of the evidence, it seems doubtful if the plaintiff can be said to have made a definite case ascribing the growth of the cyst to poisoning, but in view of the statement already referred to, made by Mr Chatterjee's learned junior on behalf of the plaintiff, it is perhaps not necessary to pursue the matter further. The plaintiff's case still remains that the cyst, however it might have been caused, is certainly one of the factors which account for the plaintiff's "speech disorder". It is necessary only to call attention to the part of the judgment where the learned judge deals with the matter (Vol 18, p 416, ll 20-40).

1 NATURE AND COURSE OF ILLNESS

I may pass on now to a consideration of the first of the topics in the Darjeeling chapter I have indicated, namely, the nature and course of the second Kumar's illness.

The difficulty of arriving at a certain conclusion on the subject need not be minimised, having regard specially to the long lapse of time which has supervened. Fortunately, a few contemporaneous documents have been preserved, which should doubtless be of great value so far as they go, but it so happens that they do not all speak with the same voice, and an attempt to reconcile them with the case of one party or the other is by no means an easy task. It is indeed not without significance that while the defendants seek to rely mainly on Calvert's condolence letter of the 10th May, 1909 and his death certificate of the 7th July, 1909, the plaintiff should take his stand on the telegrams and prescriptions and also on the letter which Calvert wrote to Lindsay on the 3rd August, 1921, a letter which, as already pointed out, was admittedly in the defendants' possession, and was actually shown by them to Calvert before he came to depose, but which they would still not produce during the examination of the witness. As regards the oral

evidence, the plaintiff has only his own testimony to rely on, and he relies on it, whereas the defendants have examined a number of witnesses, but would jettison a great deal of this evidence themselves. This body of evidence, however, is there, and if the defendants have chosen to put into the box witnesses whose statements they are not prepared to accept, that is undoubtedly a fact which the court will be bound to take into account in trying to arrive at its conclusions. Besides two of the doctors who treated the Kumar, Col Calvert, the consultant, and Dr Ashutosh Das Gupta, the attending physician, the defendants' witnesses include Bibhabati Devi herself, her brother Satyendranath Banerjee, Begim Behari De, the khansama, Birendra Chandra Banerjee, the personal clerk and alleged relation of the Kumar, Anthony Morel, the Indian Christian employee, Shyamadas Banerjee, a cousin of Satyendra, and Jagat Mohini, the nurse who attended only on the last day of the illness

Mr Chaudhuri urged before us with great force, as he had done in the court below, that the attending physicians were the best persons to speak with authority on the symptoms of the patient, and he should, therefore, have no right to complain, if the plaintiff sought to rely on the evidence of Col Calvert or Dr Ashutosh Das Gupta in support of his case on matters on which he had no substantive evidence of his own to offer. Paradoxical as it may seem to be, the fact remains that the plaintiff's case as regards the nature and course of the illness rests very largely on the evidence of the defendants, and in proof of certain material facts Mr Chatterjee has, in particular, called in aid the statements of Dr. Ashutosh Das Gupta, as I think he was entitled to do. He was a witness who was deliberately trying to keep back the truth, and if such a witness, said Mr Chatterjee, was forced to make certain admissions under the pressure of cross-examination, these certainly constituted the most valuable evidence in the plaintiff's favour, and this could not be discarded simply by saying, as Mr. Chaudhuri wanted to say, that it was the evidence of an unreliable person. Mr. Chaudhuri's apologia for this witness may be given in his own words. Dr Ashu, he says, "was cross-examined four times here but three times before. He had no case diary, the prescriptions were shown to him for the first time after 13 years in cross-examination, he had not seen the telegrams and he was cross-examined regarding the course of illness practically from hour to hour. His answer should have been that he had forgotten, but there is a class of "foolish" witnesses who try to remember everything. This is how the witness has made "some mistakes." Mr Chaudhuri has no doubt tried to put the best face he could on the evidence of Dr Das Gupta, but this is evidence which is a typical illustration of the dictum of Daniel Webster—falsehoods not only disagree with truths, but usually quarrel among themselves

The learned trial judge has dealt with the topic of illness very exhaustively, tracing its course from day to day, and giving due weight to all the relevant facts and materials before him. It is not necessary for me to recapitulate at length his analysis of the evidence, but it will be enough to notice only some of the salient points in the light of the arguments which were advanced before us

The main question is to find out, first, what were the actual symptoms exhibited by the second Kumar in his illness, and then, whether they were symptoms of biliary colic or of arsenical poisoning. As it is the plaintiff's case that the Kumar developed symptoms of such poisoning in the evening on the 17th May which continued throughout that night and on the following

day, this would be the really crucial period to be considered, and in this connection the defendants urge that the condition of the patient on the morning of the 8th May should be a point of decisive importance. The plaintiff says that on this morning the Kumar was in a condition which unmistakably pointed to arsenic poisoning, whereas the defendants maintain that he kept very much better until about mid-day when he suddenly took a turn for the worse, necessitating an emergent summons to Col Calvert.

SYMPTOMS OF BILIARY COLIC

It is perhaps important at the outset to get an idea of the nature and symptoms of biliary colic. Colic is a general term applied to spasmodic paroxysmal pain situated in the abdomen, and according to the medical authorities, there are three kinds—intestinal colic, hepatic or biliary colic, and renal colic—and they have certain features in common—(1) the pain is extremely severe, and sudden in its onset, (2) not infrequently there is vomiting from the severity of the pain, (3) the face is pale and “anxious”, and in severe cases the pulse is rapid and feeble, though it practically never exceeds 100, (4) the temperature is neither above nor below normal, (5) the physical signs in the abdomen are negative, and the pain may even be relieved by pressure, (6) the patient is “doubled up” with pain, restless, trying to find a position of comfort.

In this case we are concerned only with *biliary colic*, which is due to the passage of a gall-stone into the bile duct. Gall-stones are accretions which form in some part of the biliary passages, most commonly in the gall bladder, and when they move along any of the ducts, they give rise to biliary colic. Gall-stones may be completely latent. More frequently the development is preceded and accompanied by continuous or intermittent dyspepsia. These “inaugural symptoms” are sometimes referred to as gall-stone dyspepsia; they are really due to cholecystitis, and not to the presence of stones. Typical attacks of severe colic are less frequent and are uncommon in the absence of previous symptoms. Symptoms may be absent when the stone is at rest, but when it begins to move—(i) the pain is agonising, it starts in the epigastrium and shoots into the right hypochondriac region towards the spine and up to the right shoulder, but never passes downwards. The paroxysm is usually so severe that the patient is in a state of partial collapse, with vomiting, hiccough, subnormal temperature and a quick, weak pulse. Sometimes there is a rigor and the temperature rises a few degrees. Between the paroxysms of acute pain there is a constant dull aching and tenderness over the hepatic region. The attack lasts from a few hours to a few days. (ii) The liver may be enlarged, and if a stone becomes impacted in the hepatic duct, the enlargement may be considerable. (iii) Jaundice usually appears 12 to 24 hours after the paroxysm, and lasts from a few days to a few weeks. It is most intense when the stone is impacted in the common duct.

The symptoms which arise vary somewhat with the position of the gall-stone, according as (i) it is impacted in the common duct, (ii) it is impacted in the neck of the gall bladder, i.e., in the cystic duct, or (iii) it is impacted in the hepatic duct, the second kind of cases being the most frequent and the last very rare.

When a stone is impacted in the cystic duct, the attack begins with extremely sudden acute pain, high in the epigastrium or in the region of the

gall bladder or both, it may pass through to the angle of the right scapula. The violent pain is accompanied by great restlessness, in marked contrast with the motionless state of a patient with a perforated ulcer, acute appendicitis or coronary thrombosis. Some relief may be obtained by pressing upon the abdomen. The patient feels cold, he sweats profusely. Nausea almost always occurs, the presence of vomiting generally indicates that the stone has passed from the gall bladder into the cystic or common bile duct. The pain commonly disappears with absolute suddenness. The sudden onset and sudden cessation are specially characteristic of gall-stone obstruction in the cystic duct. *Constipation is complete*. Jaundice is absent; it occurs only when a stone reaches the common bile duct. *The important point to observe is that in this type of biliary colic none of the medical authorities indicate diarrhoea or blood in stools or any burning sensation in the stomach or cramps as a symptom*.

It is in cases of impaction of a stone in the *common duct*, either in the supra-duodenal or retro-duodenal portion, that death may follow in one of three ways: (a) when the liver ceases to function, (b) where there is stagnation of bile and infection occurs (*suppurative cholangitis*), and (c) when the gall-stone ulcerates through the wall of the common duct, and general peritonitis supervenes. There is no question in this case of any ulceration or perforation of the gall bladder or of the bile ducts.

The above account has been collected from standard medical text-books, such as Price's "A Text-Book of the Practice of Medicine", Bailey and Love's "A Short Practice of Surgery", Savill's "A System of Clinical Medicine", Taylor's "Practice of Medicine" and Osler's "Principles and Practice of Medicine", and is also supported by the evidence of the medical witnesses.

I may call attention to the important points in this evidence without attempting to set it out in detail. To begin with Calvert, what is important in his evidence is not the symptoms he mentions, but the symptoms he cannot help mentioning. Having stated that the second Kumar died of biliary colic, it is not at all surprising that even after the lapse of 21 years he should be able to say that to the best of his recollection the Kumar had pain on the right side of the abdomen, nausea and flatulence and occasional feelings of sickness (*Vol 2, p 209, ll 27-30*), or that he should agree that pain in biliary colic is spasmodic (*ibid, p 211, l 25*), or that the pain is on the right side of the epigastric region and that the liver is the tender part (*ibid, p 215, ll 6-10*), or that attacks of biliary colic may last a few moments, half an hour, a few hours, a day or longer (*ibid, ll 22-23*), or that the prominent symptom is pain (*ibid, p 218, l 12*). Nobody has accused Calvert of being a "quack". The astonishing part of his evidence is where he admits that he was prescribing not only for pain in the stomach and vomiting, but also for *diarrhoea and tenesmus* in biliary colic (*ibid, p 212, l 32*), or, where he asserts that *blood-stained mucus in stools, with a little free blood, fresh and red in colour*, was caused by "great straining and spasm due to an impacted stone" (*ibid, p 213, ll 6-17*), or puts it as no more than "quite probable" that in biliary colic there is usually marked constipation (*ibid, p 214, ll 1-5*), or where he states that although he observed haemorrhage, he did not feel concerned in prescribing for it (*ibid, p 214, ll 34-37*), or, that the promotion of bile secretion to alleviate the pain was "a matter of indifference" (*ibid, p 212, ll 13-23 and p 218, ll 24-29*).

Major Thomas was not so bold as Calvert. He was concerned to point out that in cases of gall-stones or stones in the gall bladder, there is what is known as flatulent dyspepsia or dyspepsia with flatulence (*Vol 12, p 337*,

ll 8-10 and p 356, ll 26-36) As regards the "mucus with a little free blood" in the stools, the utmost Mr. Chaudhuri could get him to state was —

"The blood-stained mucus might be due to dysentery and the little free blood might be direct bleeding from an ulcer" (*ibid*, p 340, ll. 22-23)

Pointedly asked if, apart from dysenteric condition, there could be any other cause in a case of gall-stone, all that he could bring himself to say was —

"A — Yes I would say that pus might come down through the ducts and enter the intestines and in passing down the large intestines set up an inflammatory condition there, or re-awaken or re-exacerbate an old dysentery, a latent dysentery I should prefer to say" (*ibid*, ll 24-30)

After this fantastic explanation he had to admit in answer to a question from the court —

"I should prefer dysentery as explanation to any other" (*ibid*, l 31)

By the way, would it be wrong to apply to this expert by Mr Chaudhuri's own token the remark which he chose to make (on the 2nd December, 1938) regarding this class of witnesses on the other side—"experts who, we know, can come and support a case provided the remuneration is sufficiently large"?

The witness had to agree that "*you must suspect arsenical poisoning, if there is blood in the stools*" (*ibid*, p 353, ll 11-13) As regards biliary colic, he said that if a gall-stone is impacted in one of the ducts, the pain is not necessarily continuous as long as the gall-stone remains *in situ* During the intervals the stone in the duct is generally loosened, and when the loosening takes place, the pain disappears or is alleviated If the stone is continuing inside the duct, that does affect the stomach, but this would not be easy to explain (*ibid*, p 356, l 37—p 357, l 12)

Col Denham White is much shorter and more restrained He has known cases of death from gall bladder, and knows that there is no case of biliary colic in which there is no dyspeptic pain in the stomach (Vol 17, p 156, ll 33-36), but as for the little free blood with mucus in stools, he opines it was a case of "bacillary dysentery", though it was no indication of arsenic poisoning (*ibid*, p 158, ll 4-11) Cramps, he adds, may occur in biliary colic From the prescriptions and Col Calvert's evidence, he formed the opinion that *the illness was dysentery*, not that the treatment was for it (*ibid*, p 165, ll 17-19), and reading his evidence, without the prescriptions, he thought it *was a case of enteritis,—the symptoms of arsenical poisoning being the symptoms of acute enteritis* (*ibid*, 166, ll 13-14 and p 165, ll 25-26)

Coming next to the plaintiff's medical witnesses Col MacGilchrist and Dr Bradley, it is enough to state that their evidence is in entire consonance with the authorities They are definite that in biliary colic you get neither diarrhoea, tenesmus, spasm in the intestines, nor blood-stained mucus in stools with a little free blood (Vol 9, p 344, ll 30-36 and Vol 11, p 350, ll 1-6 and p 362, l 35—p 363, l 20) Both the doctors also agree that if a gall-stone got impacted in the cystic duct and the duct was ruptured in consequence, the stone and the blood due to rupture would travel to the peritoneal cavity and could never get out of the rectum On the other hand, if the stone did not cause a complete rupture of the walls of the cystic duct, but ulcerated through it into the duodenum, the blood that would pass out of the rectum would be tarry black (Vol 9, p 345, ll 1-15, and Vol 11, p 350, ll 8-22 and p 363, ll 2-13) They are again at one with each other in saying

that there is no loss of fluid in gall-stone to cause cramps (*Vol 9, p 346, ll 13-15 and Vol 11, p 352, ll 12-13*) In biliary colic, Col MacGilchrist explains, the pain is in the right hypochondriac region, which means under the ribs, and is also felt at the back and right shoulder, and not over the region of the stomach when the stone gets impacted in the duct, the duct contracts excessively to expel it, and it is this excessive contraction which causes the pain There are three ducts—the hepatic duct, the cystic duct and the common bile duct, and he explains their action (*Vol 9, p 346, l 37—p 347, l 5*) To similar effect is the evidence of Dr Bradley (*Vol 11, p 352, ll 20-26 and p 362, ll 3-13*)

Calvert's positive evidence, which Mr Chaudhuri adopted as the defendants' case both in this court and in the court below, is that the second Kumar's biliary colic was caused by the impaction of a stone in the cystic duct His first statement in examination-in-chief was in general terms.—

"His illness was gall-stone He died of biliary colic due to a stone getting impacted" (*Vol 2, p 203, ll 3-4*)

Again—

"The illness was gall-stones The cause of death was collapse due to colic and pain and the stone impacted in the duct" (*ibid, ll 19-20*)

In his "affidavit of death" of the 7th July, 1909, also he merely stated that the cause of the Kumar's death was "collapse following upon an acute attack of biliary colic (gall-stone)" (*Ex Z(111), Vol I, p 178, ll 21-28*) In cross-examination, when confronted with an opinion of Burney Yeo that during paroxysms of pain in biliary colic the patient should be given sodi bicarb with sodi salicylas mixed in a pint of hot water to drink repeatedly in mouthfuls till the pain ceases, because this drink serves the purpose of diluting and promoting the flow of bile, Calvert said that he agreed with reservations, and added —

"If the common duct is completely blocked, it is not to be expected that this medicine will increase the flow of bile or relieve the obstruction"

He was then asked if he thought on the first day that the common duct was completely blocked, and he admitted "To the best of my recollection the common duct was not concerned at all in this case It was the cystic duct" (*Vol 2, p 212, ll 8-23*) Later on, he was more definite—"The cause, I say, was stone in the cystic duct" (*ibid, p 215, l 1*)

On the defendants' evidence and according to their case, we are not concerned, therefore, in this case with anything more than one particular form of biliary colic—a stone being impacted in the cystic duct,—not even with the cystic duct being traversed and the stone entering the common duct, much less with the stone ulcerating through the wall of the gall bladder either into the duodenum or into the transverse colon, or becoming impacted, in one case, in the lower part of the ileum, or in the other, being passed *per anum* after more or less pain and difficulty from obstruction at the sigmoid or near the anus

One or two other facts about biliary colic may be added Gall-stones are commoner in advanced life, and occur in women more often than in men Price says They are very rare before the age of 15, 75 per cent of clinical cases occur between 30 and 60, 40 to 45 being the most common age The incidence is greatest *post mortem* about 20 years later Gall-stones occur in

about 25 per cent of all women and 7 per cent of all men dying after the age of 25. Osler also states that the great majority of cases occur between 30 and 60, 40 to 50 being the most common decade. They are rare under 25, but cases have occurred in the new-born and in infants. Three-fourths of the cases occur in women. Savill says that the prognosis as to recovery from an attack of biliary colic is excellent, but recurrence may be expected.

SYMPTOMS OF ARSENICAL POISONING

It is necessary now to turn to the symptoms of arsenical poisoning. Arsenic, as is well-known, is an irritant poison, and owing to the almost tasteless property of many of its compounds and preparations, it is perhaps the commonest poison used for homicidal purposes. There are different varieties of arsenical poisoning: it may be acute, sub-acute, or chronic. But it will be enough for our purposes to consider the first type only. I take the following from Price's "A Text Book of the Practice of Medicine", 5th Edition, p. 381 —

Pathology The stomach contents usually contain much mucus which may be blood-stained. The signs of gastro-intestinal inflammation will be present.

Symptoms The symptoms commence within an hour if the stomach is empty, but may be delayed if the stomach is full, and if the poison is in the solid state there will be further delay. A burning pain occurs in the epigastric region, and nausea and vomiting usually follow. The vomit will contain any food present in the stomach, and there is often much mucus. Bile is usually present, and sometimes streaks of blood. As the poison is passed on to the intestine, abdominal pain, of a gripping or colicky type, and usually diarrhoea occur. The stools are watery, and may contain flakes of mucus. The continual vomiting and diarrhoea cause exhaustion, faintness and collapse. Cramps in the legs may occur, but are not a constant symptom. In a severe case restlessness, stupor and coma develop, and death follows shortly. Death in an acute case may occur within 24 hours, or may be delayed for three days or more.

The account given in Lyon's Medical Jurisprudence for India, which Mr Chaudhuri would himself rely on, is not at all different (9th Edition, pp. 489-490). According to Lyon, the earliest effects following on the taking of the poison are a feeling of faintness, accompanied by nausea and heart-burn. Shortly after this the individual begins to vomit. The heart-burn rapidly develops into a burning pain in the stomach, which extends upwards to the throat. A patient in describing the pain said that he felt as if he had a chula (oven) in his stomach. The pain increases in intensity, and spreads over the abdomen and thorax. The slightest pressure on the abdomen is resented. The patient tosses about on his bed, vainly trying to find some position which will bring him relief from the agonising pain, while at increasingly frequent intervals he vomits quantities of slimy fluid which may show streaks of blood. The throat feels raw and parched, the thirst is unquenchable, the abdomen is distended, and the torment is increased by the super-addition of colic. Purging soon follows, at first of the ordinary bowel contents, later of foetid, faeculent and perhaps blood-stained matters. An ominous sign is the appearance of thin, watery, turbid motions, resembling the well-known "rice-water" stools of cholera. Tenesmus and anal pain of a burning character are constantly present. Soon after the onset of purging

the nervous symptoms become manifest. *Cramps occur*, particularly of the muscles of the calves. *Exhaustion from pain and the rapid draining away of the body fluids brings with it the usual signs of collapse*,—a feeble pulse, embarrassed respiration and a sub-normal temperature, accompanied by cold, clammy sweat. The mind, at first unaffected, shares in the general exhaustion, a low delirium may supervene. Respiratory and cardiac weakness become progressively more marked, twitching of the muscles or even general convulsions may usher in the end, which, however, in most cases takes place quickly from respiratory and cardiac failure, in from 24 to 36 hours. No single symptom can be considered as characteristic of arsenical poisoning any one of them may be late in appearing, slight, or altogether absent.

The evidence of the plaintiff's medical witnesses Col MacGilchrist and Dr Bradley tallies with the account given in these standard authorities. I do not propose to quote their evidence, but merely give the references—

Col MacGilchrist—*Vol 9, p 343, ll 20-37, p 345, ll 18-30, p 346, ll 13-11 and ll 18-25*

Dr Bradley—*Vol 11, p 350, l 37,—p 351, l 2, p 352, l 3 and ll 13-14, p 358, ll 9-13 and p 361, ll 12-13*

It is no use trying to belittle the last-mentioned witness, as Mr Chaudhuri attempted to do, merely because he was not familiar with Taylor's Jurisprudence or had not heard of Lyon's Jurisprudence (*ibid*, p 358, ll 6-8). Mr Chaudhuri was not able to show that his evidence, though given without reference to these authorities, was contradicted by anything to be found therein. I do not see how it is a disparagement to any expert not to know any particular text-book or text-books on his subject merely because they happen to be known to cross-examining counsel.

Turning to the defendants' medical experts, Calvert has never seen a case of acute arsenical poisoning, but agrees that the description given to him by the plaintiff's counsel tallies more or less with that of the text-books, except that he qualifies his statement by saying that the stools may "rarely" contain a little blood, and the character of the stools more resembles the rice-water stools of cholera, and the vomiting is of a similar appearance or consistency (*Vol 2, p 221, ll 27-39*). He is prepared to accept Lyon as an authority, but only "generally with reservations" (*ibid*, p 222, ll 1-2).

As regards Major Thomas, he admits that symptoms of arsenical poisoning are apparently the same as those of cholera (*Vol 12, p 339, ll 30-32*), and that in arsenical poisoning there is extreme tenderness of the abdomen (*ibid*, p 340, ll 1-5). He, of course, says that blood-stained mucus with a little free blood would not only not indicate arsenical poisoning, but the reverse, the explanation he would give, as pointed out before, being dysentery rather than anything else (*ibid*, p 340, ll 10-31). He concedes that vomiting and purging may be expected in arsenical poisoning among other symptoms, but only "of a particular kind" (*ibid*, p 348, l 37—p 349, l 2). "The authorities on arsenical poisoning", he says, "are all agreed that the stools are large watery stools resembling the stools of cholera", and although he can see no reason why there may not be blood and mucus in the stools in the case of arsenical poisoning, he would still maintain that the mucus "would not be visible in the stools" (*ibid*, p 350, ll 30-33). A passage was put to him from Herbert French's book on "Index on Differential Diagnosis", 4th Edition, p 103 (*ibid*, p 350, ll 13-24), but he was not prepared to accept Herbert French as an authority on poisoning, though his book has run into several editions, and even the witness "would not exactly except him from the first rank", only that he "would not put him among the highest" (*ibid*,

p. 351, ll 1-13). The way in which Major Thomas tries to fence on the question of the presence of mucus and blood in the stools of arsenical poisoning is indeed a study (*ibid*, pp 352-355)

Col Denham White knows the symptoms of arsenical poisoning, but if he saw the symptoms in a given case, he would not suspect arsenic poisoning unless circumstances raised a suspicion, because the symptoms of arsenical poisoning were the symptoms of acute enteritis (*Vol 17, p 165, ll 19-26*). He admits, however, that symptoms of arsenical poisoning generally resemble those of cholera to a large extent, and *the burning sensation in the stomach is very great in arsenical poisoning and that would arouse his suspicion* (*ibid*, ll 27-29). In arsenical poisoning, he says, you get watery stools with mucus, but not invariably with blood (*ibid*, ll 30-33), and cites in re-examination as authority Cushny's Pharmacology, 1928 Edition, p 682, paragraph 3 (*ibid*, p. 166, l 34—p. 167, l 2).

SECOND KUMAR'S SYMPTOMS

Now, as to the symptoms of the second Kumar, particularly from after the evening of the 7th May. As to this, as already indicated, the evidence comes from the defendants' side, and much as Mr Chaudhuri may be anxious to run away from such parts of it as apparently do not suit his clients, I do not think the court is bound to permit him such latitude. It is the testimony of Dr Ashutosh Das Gupta that he would particularly avoid, but even if this is put aside, it is difficult to see how the rest of the defendants' evidence, consisting of undisputed documents and of statements of witnesses which they themselves accept, helps to make a consistent case for them.

ORAL EVIDENCE

Take, first, the symptoms which Mr Chaudhuri himself admits, but no doubt seeks to explain away, namely, those which Calvert could not deny or as to which Calvert did not say his recollection was not to be depended upon. Among other symptoms, these were—pain in the stomach, vomiting, diarrhoea and tenesmus, as indicated by his Mag Carb prescription of the 8th May, *Ex 51(e)*, and motions consisting of blood-stained mucus with a little free blood, fresh and red in colour, besides the further fact of collapse, which Calvert admits in so many words when asked about the condition of the Kumar at the time he is supposed to have given the morphia injection on the 8th May (*Vol 2, p 218, ll 1-3*).

Satyendranath Banerjee also admitted severe pain in the stomach and blood stools, only that he would not place the blood stools earlier than about half past 11 in the morning on the 8th May (*Vol 16, p 427, ll 14-17, p 472, ll 6-7 and p 483, l 28—p 484, l 10*), though, as regards collapse, he struggled hard against an unqualified admission of it (*ibid*, p 472, l 19—p 473, l 3 and p 501, ll 16-19 and ll 27-35). All the symptoms were finally put to the witness by the plaintiff's counsel, and there was no denial.

"Q—You don't suggest that the symptoms I give you—*watery stools with blood, vomiting, pain in the stomach and collapse*—occurred without a cause?

A—"No" (*ibid*, p 437, ll 4-7)

Bibhabati Devi in her evidence also speaks to vomiting tendency, vomiting, and stools with blood and mucus (*Vol 12, p 202, ll 27-40*) She first denied that the Kumar had pain in the stomach, but without knowing anything of anatomy, or physiology, was able to say that the pain "would arise in the region of the liver", and then said, "from the liver it went to chest, back *and stomach*", correcting herself at once after this statement and admitting

"Yes, he did get pain in the stomach also" (*ibid, p 224, ll 7-15*) She conceded "collapse", but could not say whether it was "profound collapse" (*ibid, p 226, ll 1-2*) She would go as far as to say that the Kumar's body was "cold", but not "ice-cold" (*ibid, p 260, ll 34-38*)

DOCUMENTS CALVERT'S LETTER TO LINDSAY

Apart from this oral evidence which, as it appears to me, is more consistent with the plaintiff's case than with that of the defendants, significant corroboration comes from a document of the defendants which they would rather wish the Court to ignore—the letter which Calvert wrote to Lindsay on the 3rd August, 1921 reporting the facts connected with the illness and death of the Kumar, *Ex Z (127)*, (*Vol II, p 350*) How the defendants resisted the production of this letter, though they had shown it to Calvert before his examination, and Satyendranath Banerjee had also seen it before a copy was sent to London, and how they were ultimately forced to disclose it at the instance of the plaintiff—is a story I have already related, which is typical of the way in which the defendants have attempted to suppress material documents in the case The existence of the original letter, now that it has been produced in court, can no longer be in doubt, but still learned counsel for the defendants stated during Lindsay's cross-examination that he had no instructions as to whether the original was in existence (*Vol 2, p 168, ll 8-9*), the cross-examination taking place after Calvert had practically admitted the document It is difficult not to agree with Mr Chatterjee that no comment against Calvert could be strong enough for his having agreed to give evidence in suppression of the facts he himself had related in this letter, and then given his evidence contrary to its tenor

The letter is undoubtedly an "important communication", as Satyendranath Banerjee himself admits (*Vol 16, p 493, ll 6-7*), and as further reference to it will be necessary, it is just as well to set it out here in full —

Ex Z (127)

"Confidential

Templecombe,
Willingdon Road,
Eastbourne,
3 August, '21

"Dear Sir,

"I remember the second Kumar of Bhowal who came on a visit to Darjeeling in May, 1909 He was suffering from "Gallstone" His death made a considerable impression upon me at the time, as I thought that had he only listened to our advice, he need not have died On the day of his death he was seized with a severe attack of biliary colic An injection of morphia would have relieved him

almost immediately of his pain. He refused to have any subcutaneous injections, because his mother when *in extremis* had died after receiving a hypodermic injection, and he attributed her death to the injection, instead of to the illness which necessitated the treatment. Owing to vomiting and purging, opium by mouth and rectum was not retained. The severe pain being unrelieved, brought on collapse from which he died. I cannot now be certain whether I was present at the moment of his death, but I saw him shortly before it in a state of profound collapse. On my last visit his Bengalee medical practitioner was present and arrangements made for the late Colonel Macrae, I.M.S., then I.G., C.H., Bengal, to see him in consultation in the morning. Col Macrae had been Civil Surgeon at Dacca and knew the Kumar's family. The Kumar, however, did not recover from the collapse and died the same night.

"Yours sincerely,

J T Calvert

"J H Lindsay, Esq, I.C.S."

Calvert is definitely stating here that the Kumar had "vomiting" and "purging" for which he administered opium by mouth and rectum, but this was not retained, which to my mind gives a completely different picture from what Calvert now suggests in his evidence. It will not do for Mr Chaudhuri to explain this away by saying as he did that Calvert, writing in 1921, 12 years after the event, must have been hazy in his recollection as to details. Calvert expressly writes that the Kumar's death made a considerable impression upon him at the time, as he thought that had the Kumar only listened to his advice, he need not have died, and it is significant that in his present evidence he mentions this very circumstance almost in identical terms as the reason for having a "very good recollection" of the facts regarding the Kumar's illness and death.

"Q—Have you any independent recollection of the facts mentioned in J.T.C. 1, apart from the certificate itself (*certificate of death, Ex Z (111), Vol I, p 178*)?

A—I have a very good recollection because the death of the Kumar made a great impression upon me at the time in that I thought it was an unnecessary death, and that had he agreed to the treatment, his death need not have occurred at that time, he being a young man" (*Vol 2, p 205, ll 25-30*)

If this was good enough to keep his recollection alive in 1931, one does not see why it should have failed him ten years earlier.

MUKUNDA'S TELEGRAM TO BARA KUMAR

There is yet another document of the defendants which, if I may so put it, helps to fix them completely, and destroys the whole of the present case of biliary colic. It is the telegram which Mukunda Guin sent to Bara Kumar from Darjeeling on the 8th May at 3-10 P.M. (*Ex 222, Vol I, p 300*)

"Kumar is seriously ill. Frequent watery motions with blood. Come sharp."

The "frequent watery motions with blood" seems to me to carry the plaintiff almost the whole way' it not only rules out biliary colic, but suggests arsenic poisoning. All the medical authorities are agreed that thin, watery motions resembling the rice-water stools of cholera are a characteristic symptom of this kind of poisoning, and not even Calvert, who would expect fresh, red blood with mucus in biliary colic, could deny this. One of Mr Chaudhuri's complaints was that Calvert was not asked a single question as to whether the Kumar's motions were of a rice-water character, but learned counsel conveniently forgot the answer which the witness had given.

"The late Kumar never passed watery stools with blood, and *had he done so, the treatment would have been adapted, if possible, to the cause of that condition*" (Vol 2, p 213, ll 4-6)

It is indeed the plaintiff's case that the watery motions with blood were concealed from Calvert, which is no doubt denied in a manner by Bibhabati Devi, and expressly by Satyendranath Banerjee (Vol 16, p 473, ll 10-15, and p 483, ll 1-9 and ll 23-35). Mr Chaudhuri tried his best to make out that "watery motions" in the telegram did not mean what it said. I can well understand this coming from learned counsel who doubtless realises the implications of it, but what is significant is that his client Bibhabati Devi, though she has never heard of the symptoms of arsenic poisoning and never "applied her mind" to the subject, is still very particular in insisting that the stools referred to in the telegram were only "liquid", but "not like water" (Vol 12, p 222, ll 6-10 and p 223, ll 13-34). As is to be expected, Satyendra follows suit in typical fashion.

"Q—Does that (that is, the telegram) remind you that the Kumar had stools as there described?

A—All that I can say is that the stools were not water but *patla baghye*—very liquid stools.

Q—Very liquid stools—would you call them, in Bengali, "watery motions"?

A.—We do.

"*Jaler matan patla baghye kacche*" I would translate "motions like water." I may also translate it as "watery." (Vol 16, p 471, l 40—p 472, l 5)

Again

"Q—May I take it you can't explain how the Kumar came to pass frequent watery motions with blood if he was suffering from biliary colic?

A—I can. I have heard these are the symptoms of biliary colic.
(To Court I heard it at Darjeeling from Col Calvert)"

If I might pause here for a moment, this must either make Calvert a liar or brand the witness as such.

He goes on

"I have heard that Col Calvert has said he was never shown watery stools with blood. I know that Col Calvert resorted (to) (*sic*, resented?) Mr Mukherjee's suggestion that the Kumar passed watery stools.

(Adds) Experts would not call that watery stools.

Q —Do you know that the only stools shown to Col Calvert consisted of blood-stained mucus with a little fresh blood?

A —Such stools as the Kumar passed were shown to him, but he had his own description " (*ibid*, p 482, l 35—p 483, l 9)

This witness makes a slight concession that he may have heard, probably for the first time in connection with this case, that watery stools with blood is a symptom of arsenical poisoning (*ibid*, ll 16-20) I may state for myself that all this equivocation, either on the part of Bibhabati Devi or of her brother, does not impress me at all, and I have no hesitation in holding that the words in the telegram must receive their plain natural meaning, in entire consonance with the plaintiff's case

DR DAS GUPTA'S EVIDENCE

If Mr Chaudhuri did not fight shy of his own witness, Dr Ashutosh Das Gupta's evidence, if referred to, would have left the matter in very little doubt. He admitted that in Mr S P Ghose's court in the Defamation Case he had said in examination-in-chief that on the day of his death the Kumar got a severe diarrhoea in the morning and passed "terribly bloody stools", but from his later recollection which is supposed to have improved with the lapse of time, from the telegrams as well as the prescriptions, he said, this was his mistake, the statement was false (*Vol 16, p 260, ll 33-38*). Quite characteristically, elsewhere in his deposition he tried to make out that the stools were "loose", not as *patla* (liquid) as water (*ibid*, p 261, ll 15-18). Later on, however, he conceded having said that "watery motions" means liquid stools like water, and that to an English doctor he would describe the purging in a case of cholera as "watery stools" (*ibid*, p 338, ll 18-24).

It follows, then, that as regards at least one important symptom—"bloody stools"—the defendants' documents belie the case they now make in their oral evidence, but either would definitely negative the case of biliary colic. The other symptoms which are practically admitted—tenesmus and collapse—are also unerring pointers in the same direction.

Bibhabati Devi made a feeble effort to deny tenesmus, just as she also recoiled from the suggestion of a collapse (*Vol 12, p 225, l 23—p 226, l 2*), but reading this lady's description of her husband's symptoms, I cannot help feeling that she was speaking more by the book than from her recollection, with her eyes set on the track which her chief medical expert had chalked out for her as best he could in the circumstances of the case.

Satyendra, as we have seen, practically admitted collapse, though he fought to the last the suggestion that the Kumar was "in a state of profound collapse" shortly before his death, as reported by Calvert to Lindsay in his letter of the 3rd August, 1921.

Q —Would it be correct to say that "the Kumar was in a state of profound collapse shortly before his death"?

A —I have already said he was in a state of—call it collapse, call it *himanga*" (*Vol 16, p 487, ll 20-24*)

Further on

Q —Do you remember now that his *himanga* was at its worst shortly before his death?

A —To cut short matters, I would say 'yes'

Q—Is that your answer, not to cut short matters?

A—I have given my answer" (*ibid*, p 487, l 38—p 488, l 2)
Later he said

"I do not know what Col Calvert meant by 'profound collapse' and what he meant by 'shortly before his death'" (*ibid*, p 501, ll 30-31)

As regards the burning sensation in the stomach, the plaintiff relies on the evidence of Dr Ashutosh Das Gupta, and I see no reason why he should not be entitled to do so. In the Sripur case, Dr Das Gupta had said

"There was a burning sensation in the abdomen of the second Kumar on the 8th May, the day on which he died" (*Ex 394 (10), Vol III, p 20, ll 11-12*)

On this being put to him in cross-examination, he did not repudiate the statement but explained that he had said it in Bengali, and then indulged in a piece of verbal quibbling which only one conversant with the Bengali language will appreciate. It is enough to state that he had to admit that the Bengali words which he had used did mean burning sensation in the stomach, though he would object to their being taken to mean, "stomach burns" (*Vol 16, p 302, l 22—p 303, l 7*). If this evidence is accepted, here was again a characteristic symptom of arsenical poisoning, contra-indicated in biliary colic.

Mr Chaudhuri's answer as regards the burning sensation was that it was disposed of by the belladonna liniment and the rubbing of the ginger powder over the stomach, as prescribed by *Ex 51 (d)*, the last prescription of the 8th May (*Vol I, p 283*). Bibhabati Devi had said that the nurses rubbed the white powder all over the body of the Kumar—hands, feet, chest, abdomen, back, everywhere—all over the body, and it did not appear that this rubbing over the chest and abdomen was causing him any pain or discomfort (*Vol 12, p 203, l 37—p 204, l 2*). Mr Chaudhuri also refers to the evidence of Jagat Mohini the nurse (*Vol I, p 293, ll 4-16*). Apart from the fact that this argument is based on an attempt to reconstruct the illness from prescriptions, a course which Mr Chaudhuri has so strongly deprecated, learned counsel forgets that on the plaintiff's case the Kumar was in a state of profound collapse when the liniment or the ginger powder might have been applied—in fact long past the stage when he would be complaining of a burning sensation in the stomach. The plaintiff's own evidence, it will be recalled, is that he felt this pain during the night of the 7th May, and it is now admitted by the defendants that the Kumar had some pain that night. It could not be the pain of biliary colic, for apart from anything else, one should expect in that case that Calvert would be called in, or at any rate, there would be a prescription, but the defendants' own evidence establishes neither the one nor the other.

In discussing the Kumar's symptoms so far, I have avoided any reference to the prescriptions, but as the learned trial judge has pointed out and as is also established by the medical authorities and the medical evidence in the case, the prescriptions fully support the conclusion I have already indicated. Apart from the prescriptions, some of the symptoms, as I have shown, are definitely not those of biliary colic but of arsenical poisoning, and the effect of these, in my opinion, is not at all destroyed by the other symptoms merely because they are to be inferred from prescriptions or might be consistent with biliary colic. In this view of the matter, it is perhaps

not necessary to enter into any further examination of the other symptoms or of the prescriptions. The symptoms must be taken in their totality, and so taken, I do not think it is possible to say with Mr Chaudhuri that the symptoms, whether deducible from the prescriptions or otherwise, neither point unmistakably to arsenic poisoning on the one hand, nor exclude biliary colic on the other.

One cannot overlook in this connection the case which the defendants themselves made through their medical witness Col Denham White who said this in examination-in-chief

"Reading Calvert's description, the first thing that occurred to me was that it was a case of *bacillary dysentery*. I think on the whole that is my opinion" (*Vol 17, p 158, ll 9-11*)

Nor is it possible to ignore the definite opinion which he expressed in cross-examination

"From Col Calvert's evidence, not from the prescriptions, I formed the opinion that the case was one of *enteritis*" (*ibid, p 166, ll 13-14*),

and again

"Reading the evidence of Col Calvert, I think his treatment was directed towards *acute enteritis*, not taking into account the pills in *Ex 51(a)*" (*ibid, ll 19-21*)

If this is read with Col Denham White's previous statement that "the symptoms of arsenical poisoning are the symptoms of acute enteritis" (*ibid, p 165, ll 25-26*), it is difficult to see how Mr Chaudhuri can resist a conclusion, so far as it is possible to rest a conclusion on expert medical opinion, which is wholly contradictory of his case. It will be observed that Col Denham White expresses his opinion, not from the prescriptions, but from Col Calvert's own evidence, the whole of which he had read, and it hardly lies in the mouth of Mr Chaudhuri to say that his expert was less competent to do so than any other person. Nothing is gained by pointing to the words of conventional apology which Col Denham White used before criticising the opinion of Calvert—"I should not consider myself presumptuous in giving my opinion after reading the prescriptions and Col Calvert's evidence, but I should feel I was rather unwise, not having seen the patient" (*ibid, p 166, ll 7-9*)

Major Thomas, it should be noted in this connection, said that enteritis is inflammation of the mucus membrane of the intestines, caused by a bowel irritant which may be organic or inorganic, and that arsenic is a well-known chemical irritant (*Vol 12, p 373, ll 23-25*)

I do not know if any one in the position of the plaintiff, who in the circumstances of the case has nothing but his own incomplete account to give, could derive stronger or more convincing corroboration of his story from expert witnesses on the other side.

DARJEELING TELEGRAMS

In support of his case and in refutation of that of the plaintiff, Mr Chaudhuri placed some reliance on the Darjeeling telegrams other than the one in which Mukunda reported "frequent watery motions with blood", but what are the

indications of these? All the telegrams may be placed together in the consecutive order of their despatch, day by day —

- 1 6th May—10 A M "Last night Kumar had fever below 99 No anxiety, no fever now Kindly wire health" (*Ex 261, Vol I, p 296*)
- 2 6th May—6-45 P M "Kumar attacked fever yesterday with severe stomach pain Civil Surgeon attending" (*Ex 223, Vol I, p 294*).
- 3 6th May—8-55 P M "Fever abdominal pain lasted two hours Now remission, no anxiety, no fear of recurring" (*Ex 224, Vol I, p 301*)
- 4 7th May—7-10 A M "Kumar had good sleep last night No fever, no pain" (*Ex 282, Vol I, p 297*)
- 5 8th May—7-20 A M "Had fever Slight pain yesterday Now normal, no anxiety" (*Ex 225, Vol I, p 302*)
- 6 8th May—11-15 A M "No fever, slight pain Vomiting tendency Civil Surgeon attending No anxiety Coming giving rice Wire 1000 passage" (*Ex 221, Vol I, p 298*)
- 7 8th May—3-10 P M "Kumar is seriously ill Frequent watery motions with blood, come sharp" (*Ex 222, Vol I, p 300*)

SYMPTOMS

So far as can be gathered from these telegrams, the symptoms were as follows —

- (1) Fever below 99 on *5th May night*, no fever on *6th May (10 A M)*.
- (2) Fever "yesterday" (*5th May*) with severe stomach pain
- (3) Fever and abdominal pain for two hours on *6th May* Remission "now" (8-55 P M)
- (4) Good sleep on *6th May night* no fever no pain (on *6th night*)
- (5) Fever and slight pain on *7th May* Normal "now" (*8th May, 7-20 A M*)
- (6) No fever, but slight pain and vomiting tendency on *8th May, (11-15 A M)*
- (7) Seriously ill, frequent watery motions with blood (*8th May, 3-10 P M*)

The condition disclosed in the telegrams excepting the last is not at all serious, and one wonders really why so many messages, some of them urgent, should have been sent—three on the 6th, one on the 7th and two on the 8th. It is significant, when presumably on receipt of the last alarming telegram of the 8th May (3-10 P M), Bara Kumar wired back the same afternoon at 4-45 P M —

"Very anxious, wire condition very often, wire immediately present condition",

that not one further telegram was sent to him, though on the defendants' case, the second Kumar remained alive up to midnight! Admittedly, a telegram announcing death was sent, but as already seen, this has not been produced and there is a serious controversy as to which party was keeping

back the document Mr. Chaudhuri very often asked us to consider probabilities but what is the probability suggested by this total blank as regards communication between 3-10 P M and midnight of the 8th May—according to the defendants, the most critical period in the history of the second Kumar's illness, and this in spite of Bara Kumar's express and anxious request—"wire condition very often", "wire immediately present condition"? Leaving aside the telegram of death, the defendants do not suggest that any other messages were sent from Darjeeling to Jaidebpur besides those which have been produced

NO MENTION OF BILIARY COLIC

It will be seen that there is no mention of biliary colic in any of the telegrams, though biliary colic is supposed to have been talked of at Darjeeling right from the beginning, according to Satyendra's own evidence (*Vol 16, p 471, ll 19-20*) His explanation of this, however, is illuminating he had "no idea about the technical name"! (*ibid. p 482, l 11*) Calvert, he says, had been using this expression before, but he does not remember whether Calvert did so at the time he proposed an injection to the Kumar on the morning of the 8th May He was calling this "pain in the stomach" instead of using the right expression, because later on he came to know the word "frequently", but *at that time* he had no idea! (*ibid. p 481, ll 36-39*) All that I need say is that comment on this kind of evidence is waste of words

NECESSITY FOR HYPODERMIC INJECTION

Another thing seems also to be clear from the telegrams If these reports which were being sent to Bara Kumar about his brother's condition were at all correct, there could have been nothing serious, and no occasion, therefore, for Calvert pressing for a hypodermic injection at any time before mid-day of the 8th May at the earliest,—which would at once falsify the case the defendants attempted to make through Calvert as well as through Bibhabati Devi and Satyendra among others, regarding the Kumar's "strenuous refusal" "*throughout his illness*" to take this the "proper treatment" "until the last moment when it was too late" (*Calvert—Vol 2, p 204, ll 22-23, p 211, l 32—p 212, l 4, p 215, ll 34-35, and p 223, ll 31-34*) Bibhabati Devi, it may be pointed out in this connection, was quite clear that Calvert wanted to give a hypodermic injection to the second Kumar, first on the morning of Friday, the 7th May, and then again the following morning (*Vol 12, p 202, ll 20-22 and ll 25-27*) Her astute brother would put it in a more guarded form

"Col Calvert had been suggesting hypodermic injection The Kumar obstinately and persistently refused to have it He had his own prejudice against that

This was proposed, so far as I remember, on the 7th and also on the morning of the 8th—about the 8th I definitely recollect" (*Vol 16, p 428, ll 16-20*)

In cross-examination, he was quite sure that Calvert suggested an injection on the 8th morning, and *the Kumar was having the pain of biliary colic at the time* He must have suddenly remembered, however, that this would not fit in with the telegrams, and pulling himself up at once, he said in the

same breath the Kumar "was *not* having pain. He had *no pain* in the morning"! He still adhered to his statement that Calvert suggested injection to alleviate pain (*ibid*, p 467, ll 1-9). Later on, Satyendra was confronted with the death certificate on the 7th July, (*Ex Z(III), Vol 1, p 178*), in which Calvert distinctly stated that "the attack became acute *on the morning of the 8th*", and this produced a reaction in the witness which was fully worthy of him.

"Q.—This statement that his condition was acute in the morning accords with Ashu Doctor's statement that his condition was such that doctors had to be sent for?

A—I also say that doctors had to be sent for, but it was not early morning. It was by mid-day.

Q—Do you refer to mid-day as morning?

A—I do not, Bengalees do not.

Q—Your evidence that Dr Calvert offered to inject morphia on the 8th goes to show he had the attack on the 8th morning?

A—He had either a slight attack or it was suggested as a precautionary measure.

To Court Against pain that might come, because the Kumar had been suffering from pain for the previous two or three days and the pain would come off and on" (*Vol 16, p 481, ll 1-14*)

As the learned judge puts it, one no more injects morphia in anticipation of biliary colic than one chloroforms a person against a possible abscess and a possible operation (*Vol 18, p 336, ll 38-40*)

DETAILED EXAMINATION OF TELEGRAMS

If the telegrams are examined a little closely, it will be seen that they either falsify, or are falsified by, the other evidence of the defendants, in whichever way they may choose to take it.

(a) Take the first telegram of the 6th May (10 A.M.), *Ex 261*, which mentions only fever below 99 "last night", but not pain. Still the defendants' present case is that the Kumar's illness began with fever and pain on the night of the 5th May. Thus, Bibhabati Devi says in examination-in-chief

"His illness began on Wednesday night. He had fever and "colic pain" that night—at about midnight. The pain lasted 1½ to 2 hours" (*Vol 12, p 202, ll 11-12*)

Satyendra also says

"At first he (Kumar) had fever and pain in the stomach" (*Vol 16, p 427, l 5*)

He was shown the telegram, and he explained that "last night" meant the night of the 5th May right up to the dawn of the 6th (*ibid*, p 496, ll 36-37), but he was unable to give any explanation as to why the pain was not mentioned in the telegram. He had admitted before that in the early hours of the 5th (i.e. between 3 and 6 A.M.), the Kumar "rolled in pain", (*ibid*, p 468, ll 4-5), though later he said, "this was an exaggeration", and explained that what he meant was "pain" and not "agony", that it was "much", not "very much" (*ibid*, p 495, ll 23-25, ll 27-29 and ll 33-34), all the same, he could

not maintain to the end that the Kumar's condition "was such that it must not be mentioned in a telegram" (*ibid*, p 496, ll 4-5)

(ii) As to the next telegram (*Ex* 223) sent at 6-45 P M on the 6th May, it mentions fever "yesterday" with *severe stomach pain*. If "yesterday" refers to the day-time of the 5th, it would be opposed to the defendants' case. If, on the other hand, as Satyendra would have it, "yesterday" means "yesterday night", the word "night" having been dropped for abbreviation (*ibid*, p 496, ll 30-33), not only would this telegram not fit in with the earlier message of that morning, but it would go against Satyendra's statement just quoted that the pain during the night of the 5th was not severe or acute. It would also leave him without any satisfactory explanation as to why no doctor was called in. If at any time, says he, the Kumar had severe pain, and the hour not "unearthly", he would get a doctor—by "unearthly hours" he means from 1 A M to 4 A M (*ibid*, p 497, ll 7-9). If a third reading of the telegram is attempted, namely, that the "fever" was on the 5th night, and the "severe stomach pain" on the 6th during the day-time, it may perhaps be possible to reconcile it with the previous message, but when the "Civil Surgeon (was) attending" on the 6th May, according to the defendants the Kumar was not very ill. Satyendra says that when Calvert came in the morning on the 6th, the Kumar had very little or no fever (*ibid*, p 466, ll 7-10), and Bibhabati Devi's evidence also is to the same effect.

"Towards dawn the fever and the pain grew less. The pain grew less towards dawn. No doctor came that night. The doctor came on Thursday morning (6th May)—Dr Calvert. Up to after mid-day the second Kumar was well, but towards afternoon colic and fever began again" (*Vol* 12, p 202, ll 15-19)

(iii) As regards the third telegram of the 6th May despatched at 8-55 P M, *Ex* 224, it mentions fever and abdominal pain which lasted two hours. This obviously could not refer to the fever and pain mentioned in the next preceding telegram, as in that case there would be no occasion for sending this further message. If, then, it refers to a fresh attack, as it must, this could only be after the despatch of the earlier telegrams, but it would be hard to reconcile it with the fact that no doctor was called in during this attack. Satyendra, who admits that the pain mentioned here was serious enough for bringing in a doctor, no doubt recollects that a doctor did come, and as admittedly Calvert came only on the 6th morning, he says that "this doctor was *possibly* Nibaran", but himself adds that he was "likely to make a mistake" on this point (*Vol* 16, p 497, ll 28-29). Bibhabati Devi is more candid and does not bring Dr Nibaran Chandra Sen to "Step Aside" on the 6th at all. Dr Ashutosh Das Gupta's present evidence also is that Dr Nibaran Sen did not come either on the 6th or on the 7th May (*Vol* 16, p 265, ll 38-39). In any case, the undisputed fact remains that there is only one prescription on this date—the carminative mixture and the opium liniment of Calvert, *Ex* 51 (*Vol* 1, p 273).

KUMAR'S CONDITION ON 7TH NIGHT

(iv) As for the next telegram, the only one of the 7th May, sent at 7-10 A M, *Ex* 282, it says "no fever, no pain", and also "Kumar had good sleep last night", but this last-mentioned detail is contradicted by Satyendra's own entry in his diary under date the 7th May (*Ex* 399 (I), *Vol* 1, p 306). "Ramendra's illness continues, pain in stomach with slight fever. No sleep

last night". His attempt to explain it away as referring to his having no sleep himself has only to be stated to be rejected (*Vol 16, p 497, ll 35—p 498, l 10, see also judgment Vol 18, p 329, ll 12-21*). This telegram is also contradicted by Satyendra's evidence that the Kumar got fever and pain at night on the 6th May (*Vol 16, p 466, l 3*)

(v) The next telegram, the first to have been sent on the 8th May (7-20 A.M.), *Ex 225*, was a very re-assuring message "Had fever, slight pain yesterday (*i.e.*, 7th May) Now normal, no anxiety", but unfortunately it is belied by Satyendra's own evidence, which had no doubt to be wrung out of him after a great deal of struggle

"Q—Would you now admit that the Kumar rolled about in bed after dusk on the 7th in pain?

A—I do, but by "rolling about" I mean what I already said—frequently changing of side" (*Vol 16, p 496, ll 10-13*)

Whatever "rolling about" might or might not mean, here is a clear admission that the Kumar had pain after dusk on the 7th May. Satyendra had of course begun by saying, when asked about the second Kumar's condition on the night of the 7th

"On that night he was also better" (*ibid, p 427, ll 29-30*)

"It may be", he said a little later, "that I heard that Ashu doctor has said that the pain on the 7th night continued on the 8th morning", but "I do not remember anything particular happening on the 7th night before I went to bed", which he did at the usual hour, *i.e.*, at about 10 P.M. (*ibid, p 466, ll 30-37*) Further on, followed a half-hearted admission of pain on the 7th night

"Q—Would you agree with me that if the Kumar was suffering from pain on the 7th night, doctors should have been called to see him?

A—Yes, doctors or a doctor were called. I recollect that at least one was called, but it may be two" (*ibid, p 473, ll 24-27*)

Again

"Q—You cannot repudiate the evidence of Ashu doctor that the pain that the Kumar had at night continued to the 8th?

A—He might have had a little" (*ibid, p 474, ll 4-6*)

He again repeats that either Dr Calvert or Dr Nibaran was sent for on the evening of the 7th, and says they were called in to treat the pain, which was "some pain", but "not severe pain". As there was no prescription for pain on the 7th—the only prescription of that day being the infamous concoction of Dr Ashutosh Das Gupta, *Ex 51 (a)*—Satyendra, of course, does not remember if the doctor who came prescribed any medicine (*ibid, p 474, l 34—p 475, l 12*). Finally, this very truthful witness had to make the admission already referred to that the Kumar "rolled about in bed after dusk on the 7th in pain"

The same admission is also to be found in the evidence of Dr Ashutosh Das Gupta, which is of particular importance in this connection, seeing that he was the sender of the telegram, this being in fact the only telegram to have been sent by him to Bara Kumar from Darjeeling about the second Kumar's illness. This is the final statement of this witness

"The Kumar had, I said, pain on the night of the 7th. This pain had a connection with the calling of Col Calvert on the morning of the 8th. I cannot say whether the pain of the second Kumar on the night of the 7th made the second Rani very anxious. I do not remember whether I was with the Kumar on the night of the 7th when the pain was on, but I ought to be there. The pain on the night of the 7th May was the pain of biliary colic" (*Vol 16, p 334, l 32—p 335, l 19*)

And yet this doctor was wiring the next morning at 7-20 A.M. "slight pain yesterday, now normal, no anxiety"!

"A SUGGESTION OF DESPAIR"

Mr Chaudhuri made an ingenious attempt to explain away this evidence by a suggestion which, if one may borrow an expression of Satyendra, was "a suggestion of despair" (*Vol 16, p 496, l 18*). Learned counsel actually said in his reply (on the 11th August, 1939) that "both these witnesses were led to speak of the pain of the 7th evening for the pain of the 6th, being shown a telegram sent on the 6th May, *Ex 224*", and to explain how the witnesses were misled, he drew attention to the fact that on the original document the date was put down as the 7th. This telegram reads as follows: "Fever abdominal pain lasted two hours. Now remission, no anxiety, no fear of recurring". Mr Chaudhuri was doing less than justice to his witnesses, for they were really not so simple-minded as he would have us believe. Before Satyendra made the statement in question (*Vol 16, p 496, ll 12-13*), he had not been shown this telegram, *Ex 224*, at all, but a different telegram, namely, the first one of the 6th May, *Ex 261*, which stated—"Last night Kumar had fever below 99", and the witness could not possibly be making any mistake about it, as he was being cross-examined regarding the condition of the Kumar in the early hours of the 6th. Mr Chaudhuri added that before seeing the telegram, *Ex 224*, Satyendra had spoken of pain on the 6th and no particular pain on the 7th night (*Vol 16, p 466, l 36, p 465, l 34, p 474, ll 1-9*), but all this is beside the point, as pain on the 6th need not exclude pain on the 7th, and an earlier statement of such a witness that there was little or no pain on the 7th night does not necessarily imply that he could not make a different statement afterwards. As any one reading the cross-examination will see, the whole object of it was to prove that the earlier statement was false and false to the knowledge of the witness.

As regards Dr Ashutosh Das Gupta, the suggested explanation of Mr Chaudhuri is still less probable. Apart from the fact that Dr Das Gupta's statement already quoted is quite definite and leaves no room for any possible misapprehension on his part, and apart from the further fact that *Ex 224* was not shown to him at all at or about the time he made the statement, one has only to refer to earlier parts of his evidence, where he stated that on the 7th May the Kumar had biliary colic about dusk, and that he had "such pain as was likely to need specific prescription" and that the pain was "very great pain" (*Vol 16, p 271, ll 31-37*)

(vi) Coming to the next telegram of the 8th May sent at 11-15 A M, Ex 221 (a), which read as follows "No fever, slight pains, vomiting tendency, Civil Surgeon attending, no anxiety, coming giving rice, wire 1000 passage", the object was apparently to convey to Bara Kumar quite a hopeful account of the second Kumar's condition that morning, in spite of the "slight pains" and the "vomiting tendency", because it definitely suggested that the Kumar was recovering and expecting shortly to come down to Jaidebpur, for which a telegraphic remittance of Rs 1,000 was asked for "Giving rice" is a common Bengali expression for return to normal diet, and the words "coming giving rice" apparently meant that the whole party would be coming back after the Kumar took nourishment. This telegram, however, is contradicted by the defendants' own evidence regarding the Kumar's condition on the 8th morning. Dr Ashutosh Das Gupta's evidence that the pain on the 7th night continued to the 8th morning has already been referred to. Satyendra as well as his sister would like to say that the Kumar took a sudden and serious turn for the worse only at about mid-day on the 8th, i.e., from after the hour of despatch of this telegram (Vol 16, p 427, ll 12-18), but he admitted later that when Calvert came on the 8th morning and suggested a hypodermic injection, the Kumar was having the pain of biliary colic (*ibid*, p 467, ll 4-5), though, as already pointed out, he wanted the next moment to withdraw the statement. He afterwards expressly repudiated Dr Das Gupta's evidence to the effect that the Kumar's condition was such on the 8th morning that Col Calvert had to be sent for (*ibid*, p 474, ll 7-9), and was prepared merely to agree that the pain that the Kumar had at night on the 7th continued to the 8th, "only a little" (*ibid*, ll 4-6). He was later asked, if the Kumar had no attack when Calvert proposed to inject morphia in the morning on this day, meaning thereby, as he explained, the time between 9 and 11 A M, and his answer was

"A—I say he had an attack of biliary colic then, but a slight attack
I mean the pain was slight and it had been continuing

To Court By 'slight pain' I mean—when the Kumar was asked
'Have you any pain?', he would say 'A little of it' There was
no evidence of it unless he said it

Q—The attack was not on then?

A—He was not in the midst of paroxysm "

(*ibid*, p 481, ll 15-26)

Calvert's evidence is also contrary to this telegram. According to Satyendra, Calvert's first visit on the morning of the 8th May was between 9 and 11 A M (Vol 16, p 482, l 12 and p 484, l 14), and Calvert thinks it was "on the morning visit" that he saw the Kumar's blood-stained stools with mucus, about a dozen of them, which, he says, had been kept for his observation (Vol 2, p 213, ll 10-13), this shows that the stools must have commenced some considerable time earlier, seeing that Bibhabati Devi says that the Kumar was passing stools every half an hour or three-quarters of an hour (Vol 12, p 225, ll 25-26).

REFUTATION FROM CALVERT'S DEATH CERTIFICATE

The most convincing refutation of this telegram comes from a document of the defendants on which Mr Chaudhuri places very great reliance—the

certificate of death given by Calvert on the 7th July, 1902, *Ex Z(111)* (*Vol I, p 178*), which, as pointed out before, distinctly states that "the attack became acute *on the morning of the 8th*" Mr Chaudhuri's gloss that "morning" meant "the doctor's morning", that is, any time up to, say, 2 P.M. without putting a single question to Calvert about it—was, I should have supposed, worthy only of Satyendranath Banerjee and not of learned counsel Satyendra, in fact, when giving his recollection that the Kumar was "ill", but not "very ill" on the 6th morning, thought it fit to add that by "morning" he meant "up to 10 o'clock", but at once checking this unconscious betrayal of lack of circumspection, he volunteered "*By morning Europeans mean up to lunch time*" In answer to a very natural question provoked by this gratuitous impromptu, he explained to the court, "There is no particular reason for adding this" (*Vol 16, 465, ll 6-9*) This was an obviously false answer, for Satyendra had a very "particular reason" for adding this little bit of technical knowledge, which came out later when he was confronted with Calvert's death certificate

"Q—This statement that his condition was acute in the morning accords with Ashu doctor's statement that his condition was such that doctors had to be sent for?

A—I also say that doctors had to be sent for, but it was not early morning. It was by mid-day

Q—Do you refer to mid-day as morning?

A—I do not, Bengalees do not " (*Vol 16, p 481, ll 1-7*)

"Bengalees do not, but Europeans do", as he had stated before—that was the obvious implication. Satyendra forgot, however,—as did learned counsel as well—that Calvert had already proved himself a "Bengalee" in this respect long before Satyendra volunteered his help. Calvert had said

"The Kumar passed motions consisting of blood-stained mucus with a little free blood"

"Q—When?

A—On the day he died. In the morning or in the middle of the day" (*Vol 2, p 213, ll 6-9*), clearly distinguishing 'morning' from the 'middle of the day'

Bibhabati Devi was also faced with the death certificate—a document which she had set out *in extenso* in her own written statement—but she scuttled away

"Q—Do you know that the certificate says that the Kumar's condition was acute in the morning?

A—I do not know" (*Vol 12, p 231, ll 1-3*)

1. REMARKABLE DOCUMENT

The telegram itself appears to be a somewhat remarkable document. According to the previous messages, there was nothing serious with the Kumar at any stage of his illness, and this telegram adds a distinct note of buoyancy by the prospect of "giving rice" which it holds out. Still one wonders why there should be any anxiety to rush the Kumar back to Jaidchpur instead of leaving him at Darjeeling to recuperate, or why there should be

this peremptory requisition for funds by telegraphic remittance. Perhaps one should not be justified in indulging in these speculations, seeing that Satyendra, who admits responsibility for all the telegrams (*Vol 16, p 465, ll 12-21*), was not cross-examined on these points. All that need be pointed out is that the evidence shows that the Darjeeling house had been engaged for three months at a rental of Rs 400 per month, of which not even a month had expired, and the estate cash book, *Ex Z(243)*, contains the following entries regarding Darjeeling expenses:

8th April, 1909 (Satyen)		Rs 400
17th April	Rs 1,456	
	Rs 1,500	
	Rs 125	
	Rs 50	
	Rs 26	
28th April		Rs 1,000
10th May, 1909—		
(T M O to Mukunda to bring Bow Rani, i.e. Bibhabati Devi)		Rs 500
10th May, 1909—		
(Advance to J N B to go to Poradah)		Rs 400

(vii) The next telegram, *Ex 222*, mentioning "frequent watery motions with blood", is one which the defendants would gladly disown, if only they could.

PLAINTIFF'S POSITION IN REGARD TO TELEGRAMS

The position which the plaintiff takes up in regard to these telegrams is quite understandable, but not so that of the defendants. They are their documents, Satyendra himself vouches for their correctness, still the defendants' other evidence, oral or documentary, is not consistent with them. The telegrams are supposed to contain facts which are within the special knowledge of the defendants, and it should be for them, therefore, to give such explanation of these documents as will reconcile them with one another and with the other evidence, which, however, as I have shown, they have failed to do. So far as the plaintiff is concerned, in my opinion he is entitled to rely on any of the telegrams which fit in with his case, and those which he rejects, he rejects not merely because they are inconsistent with his case, but because they are falsified by the defendants' own evidence. One does not know why Mr Chaudhuri did not cross-examine the plaintiff in regard to these telegrams to find out if any of them had been sent with his knowledge or approval, or as to why, so long as he was well enough, he did not send a message himself to his eldest brother. Nor do I understand why learned counsel for the plaintiff did not question his client about them either, as undoubtedly he might and should have done.

DEFENDANTS' POINTS ARISING OUT OF TELEGRAMS

It is necessary now to consider the points which Mr Chaudhuri wanted to make regarding the telegrams for the purposes of his case.

If I have followed him aright, his first point was that the telegrams showed that the Kumar had fever, and if that was so, Dr Ashutosh

Das Gupta's prescription of the 7th May, *Ex 51(a)*, would be fully justified, inasmuch as the medical evidence was that such a prescription was suitable for fever. As to this, in the first place, I am not at all sure that the defendants would like to make the case that this medicine had been actually administered to the second Kumar. In any case, all that need be said is that Dr Das Gupta's own evidence would furnish a complete answer to this prescription. As I have said before, Dr Das Gupta must be held to be its author, his story that he took it down to the dictation either of Calvert or of Nibaran Sen being demonstrably false on his own showing, and he has himself admitted that this medicine cannot be given during the pain of biliary colic, he would give it "only if the patient has malaria—the fever on with constipation", he would "not give it to a chronic malaria patient who has diarrhoea and who is in the pain of biliary colic" (*Vol 16, p 264, ll 25-36*). Mr Chaudhuri does not contend that fever—malarial or otherwise—was the principal complaint of the second Kumar. There is admittedly no other prescription for fever besides this dubious one, and Calvert was never asked if he had treated the Kumar for fever. It may be added, as the learned judge points out (*Vol 18, p 323, ll 1-4*), that in the printed form on which Calvert gave his death certificate, *Ex Z(111)*, there is a marginal direction asking the medical practitioner to state not merely what the deceased died of, but also if he had any other disease, chronic or acute. If the Kumar had fever, or Calvert had been told anything about it, he would doubtless have mentioned it in his certificate. Apart from that, the telegrams, though almost all of them mention "fever", do not on a plain reading seem to suggest fever of any marked intensity, the first telegram in fact describing it as being "below 99". Again, according to the telegrams, the Kumar is reported to have had fever only on the night of the 5th May, for two hours on the 6th, and for some time during the day on the 7th (period not specified). A lot of useless controversy was raised in the court below as to whether the second Kumar was a chronic malaria patient. suffice it to state that it is not established on satisfactory evidence that he had an attack of malarial fever at Darjeeling (*see judgment, Vol 18, p 336*). Even if the telegrams are accepted as correct, I am not prepared to hold that the fever indicated therein is such as may be supposed in any way to discount the sinister significance of the "arsenic prescription".

KUMAR'S CONDITION ON 8TH MORNING

Mr Chaudhuri's next point seemed to be that the first two telegrams of the 8th May, *Exs 225 and 221(a)*, sent at 7-20 and 11-15 A.M. respectively, were valuable contemporaneous evidence to show that the Kumar was comparatively better that morning, and that this accorded fully with another contemporaneous document, Calvert's condolence letter of the 10th May, *Ex Z(205)*, (*Vol I, p 419*). I have already referred to the defendants' own evidence which goes to contradict these telegrams, but in view of the particular emphasis which Mr Chaudhuri laid on the Kumar's condition on the 8th morning, as negating the plaintiff's case of poisoning, I may perhaps add a few further observations on the point.

In the first place, it is to be observed that Calvert was not examined at all by the defendants regarding the Kumar's condition on this morning, and his description of it in his certificate or affidavit of death was left to stand as it was. It was elicited from him in cross-examination that he saw the Kumar's blood-stained stools "on the morning visit" rather than "in the

middle of the day", and this visit, according to Satyendra's evidence, was between 9 and 11 A M. There was no re-examination of the witness on the point. Secondly, it is admitted both by Satyendra and Bibhabati Devi that Calvert proposed a hypodermic injection on the morning of the 8th, and this is also stated by Calvert in the condolence letter—"The morning I was called in he (Kumar) felt so much better that he declined the treatment I proposed" (Vol I, p 419, ll 11-12). Calvert could not possibly be speaking here of his "mid-day" visit, to which he refers in express terms in a subsequent part of his letter. On his own evidence, it is clear that there could be no question of "hypodermic medication", if the Kumar was in fact in a more or less "normal" condition or suffering only from "slight pains". Thirdly, it is not a violent assumption to make that Calvert came in the morning because he was sent for, and he would not be sent for, if the Kumar's condition did not require or justify a call. Satyendra tried no doubt to repel this suggestion (Vol 16, p 427, l 20, in examination-in-chief and p 474, ll 7-9 in cross-examination), but this was quite typical of him: he would "send for" Calvert on the 7th evening when Calvert did not come (*ibid*, p 474, l 40), but would not send for him on the 8th morning when he did come. Bibhabati Devi merely said: "On Saturday in the morning, Dr Calvert came. The second Kumar was then somewhat well. Dr Calvert wanted to give an injection, but the Kumar would not agree. He left." (Vol 12, p 202, ll 25-27). On this point Dr Ashutosh Das Gupta's evidence, allowing of course for the usual exaggerations, is more in accordance with probabilities.

"Q—Would it be true 'On the day of his death Dr Calvert was called six or seven times from 7 A M to 8-30 P M'?"

A—It would be true

Adds I said what I remembered

(Question repeated)

A—Yes, it would be true "

(Vol 16, p 291, ll 5-9)

Again

"I mentioned the three visits of Col Calvert then (that is, in the Sripur case). My present recollection is that he came many times on the 8th May. He came six or seven times."

(*ibid*, p 297, ll 32-83)

It is worth while pointing out in this connection that at one stage Mr Chaudhuri himself emphasised that "the best medical aid was sent for" on the 8th morning: this was necessary for the purpose of countering any suggestion of felonious intent on the part of Satyendra and Dr Ashutosh Das Gupta, but the moment he realised that it went directly against his case that the Kumar was comparatively better that morning, he quickly retreated and said: "Probably 'sent for' is not accurate" (I am quoting his very words of 11th August, 1939).

WHAT ARE THE PROBABILITIES?

Reading the evidence as a whole, it seems to me that the probabilities are that the Kumar had started passing blood-stained stools from a fairly early hour of the 8th morning, and that if Calvert came at or about 9 A M, he must have been sent for, and if he proposed an injection at the time, it must have been because he found the condition of the patient very acute. In any

case, it is impossible to hold that the Kumar could have been in anything like the condition indicated in the telegrams of this morning. This conclusion is not at all repelled by the Mag Carb prescription of Calvert of the 8th May, *Ex 51(e)*, (*Vol I, p 285*) as to whether this prescription was brought from Calvert from his house or not, is uncertain, and as I have said before, no such suggestion was definitely put to Calvert by the plaintiff in cross-examination, but it is enough to state, as the learned judge points out, Calvert's memory does not go to this prescription as connected with an actual visit in the morning (*Vol 18, p 349, ll 10-11*)

NO INDICATION OF GOOD FAITH

The next point which Mr Chaudhuri attempted to make on the telegrams was in connection with the last one sent on the 8th May at 3-10 P M, which, he said, was an indication of good faith on the part of the Darjeeling people not only was there no attempt to suppress such a tell-tale symptom as "frequent watery motions with blood", but there was an express request to Bara Kumar to "come sharp" in view of the second Kumar's "serious illness". Plausible as this argument is, it cannot bear scrutiny. In the first place, on the defendants' own evidence the alarming symptoms made their appearance at 11-30 A M at the earliest, and though only a quarter of an hour before a message had been sent giving a very hopeful account of the second Kumar—"No anxiety, coming giving rice",—they waited nearly four hours before communicating to Bara Kumar any news about the fresh developments. If Satyendra, as he himself says, was the person responsible for sending these messages, one has only to contrast this attempt on his part to hold back the true state of things as long as possible on this fateful day with the frequency of the messages sent on the 6th May, when apparently, on his case, the Kumar's condition could have possibly given no cause for anxiety. To my mind, if any inference is to be drawn from these telegrams of the 8th May on the question of Satyendra's good faith, the fact of this long interval between the two messages cannot certainly tell in his favour. Secondly, for aught one knows, there might yet have been no occasion for suppression of "watery motions with blood". If the previous telegrams are any indication, biliary colic was still in the air—the only illness which up to now held the field was "fever" and "stomach pain". A sudden change for the worse, serious enough to lead to a fatal termination almost with certainty, had to be accounted for a mere onset of high temperature or increased severity of stomach pain would not serve the purpose. Some approach to actual symptoms could hardly be avoided. There was certainly less risk in it than in total suppression. Again, if Satyendra is to be believed, Calvert was in the house from shortly after mid-day. The Private Secretary had with "praiseworthy zeal" got him there. None of the alarming symptoms were kept back from him. Calvert himself was strenuously, but still without success, pressing for hypodermic injection. The prognosis, on the defendants' account, was in all conscience serious. Satyendra was for the moment the master of the house who had the direction of affairs in his hands. If he was acting *bona-fide*, what would one expect him to do in such circumstances before he sent a telegram to Bara Kumar about the second Kumar's condition? He would consult the doctor, ask him what he thought about the case, and take his advice about the message to be sent. But it is not Mr Chaudhuri's case that the 3-10 P M message was sent to Bara Kumar with the knowledge and approval of Calvert, which undoubtedly would have established good faith. On the other hand, there is the attempt and all the attendant equivocation to make out that "watery motions" in the telegram

meant no more than liquid stools! As regards the invitation in the telegram to "come sharp", I do not know that the defendants are entitled to claim any merit from this, seeing, in the first place, that it was out of the question for Bara Kumar to have arrived at Darjeeling before Monday afternoon at the earliest, and secondly, that on their own case they could not have paid any heed to Bara Kumar's request in his own telegrams for "immediate" information about the second Kumar's condition

Another point which Mr Chaudhuri tried to make in connection with the telegrams was that if Satyendra was out to make a false case of biliary colic, he would have taken good care for this very reason to put "biliary colic" in the telegrams rather than avoid any reference to it. The short answer to this suggestion is that biliary colic might not have been thought of at all at this stage as a possible explanation of death

WHAT DO THE TELEGRAMS INDICATE?

Taking the telegrams as they stand, without the aid of any commentary, all that they show, to my mind, is that the second Kumar got a slight touch of "fever" at night on Wednesday, the 5th May, if not during the day as well. It was accompanied by "severe stomach pain". On the 6th he was free from fever and pain, both in the day time and at night, except only for two hours which were probably towards the evening. On the 7th he had "fever" again and "slight pain", but on the 8th morning he was "normal" till about 11 A.M., except for "slight pains" and a "vomiting tendency". Up to now there was no cause for anxiety at any stage on any day. On the 8th morning his people there were actually hoping to "give him rice" and bring him down to Jaidebpur shortly. Somewhere between 11 and 3 during the day on the 8th, he, however, suddenly took "seriously ill" and passed "frequent watery motions with blood". The condition was alarming enough to make the inmates of the house wire the Bara Kumar to "come sharp". I believe I have given a very fair summary of the telegrams, and it passes my comprehension how any one, doctor or layman, can, possibly trace in it the remotest indications of biliary colic. On the other hand, the "frequent watery motions with blood", coupled with stomach pain, might conceivably, if not necessarily, point to arsenical poisoning, at any rate to enteritis.

WHAT DO THE PRESCRIPTIONS SHOW?

So far as the prescriptions go, for what they are worth, the indications are, I may repeat—not of arsenical poisoning, it is true, but certainly not of biliary colic either, taking them as a whole, including *Ex 51 (a)*. They are mostly sedatives for the stomach, with just a few stimulants thrown in for collapse, and an opium preparation, possibly to fight diarrhoea or dysentery, and a liniment for rubbing over the stomach. None of the prescriptions, again, is for fever, excepting probably *Ex 51 (a)* which, of doubtful efficacy as it is for this purpose, is on the other hand definitely contra-indicative of biliary colic.

In this state of the evidence furnished by the telegrams and prescriptions on the question of the second Kumar's illness, Mr Chaudhuri naturally turns away from them, and invites the court instead to fix its attention on some other contemporaneous documents which he says establish the broad fact of

biliary colic, and which, if they do not constitute the only safe basis on which to proceed, would, at any rate, be much safer evidence to act on than the doubtful evidence of symptoms at this distance of time. In view of the insistence with which Mr Chaudhuri has pressed this argument it becomes necessary to examine the matter with the care and attention it deserves.

CALVERT'S CONDOLENCE LETTER AND DEATH CERTIFICATE

As already indicated, there are two documents on which Mr Chaudhuri relies, not only as regards illness but as evidence of death as well—Calvert's condolence letter to Bara Kumar, *Ex Z(205)*, (*Vol I, p 419*), and his affidavit or certificate of death of the second Kumar, *Ex Z(111)*, (*Vol I, p 178*), read with his evidence in support thereof. In view of their importance, the documents may be set out in full.

(1)

CONDOLENCE LETTER

"1, Monteagle Villa,
Darjeeling
10th May, 1909.

"My dear Kumar,

"Please accept my most sincere condolence in the great loss which you have sustained through the death of your kind-hearted and amiable brother. I am afraid that his sudden death must be attributed to a little overconfidence on his part regarding the nature of his illness and its probable termination. The morning I was called in he felt so much better that he declined the treatment I proposed, even the earnest solicitation and exhortation of his Private Secretary and friends who were most solicitous concerning his condition failed to move him. Later in the day he had a relapse, the colic coming on in a most intense form. His Secretary with praiseworthy zeal himself went round the station until he had found me on my rounds and secured my early attention to the case. This time he listened to the advice of the Secretary and his friends and allowed me to adopt the right treatment. The colic quickly ceased under the hypodermic medication, but unfortunately the system had received such a shock in the interval that he sank and died from collapse in spite of all our endeavours. All that was possible was done to save your brother's life, and he received the greatest care and attention from those about him. It would have been a great boon if he could have had his friends around him, but the exacerbation of his illness came on so suddenly and terminated so quickly that it was not possible. He had had milder attacks of this nature before, and it was his recovery from these which prevented him realizing the serious nature of the last one before it was too late.

"Yours sincerely,
J T Calvert "

"(Replied 20-5-09) "

This was marked as *JHL 4* during the examination of Lindsay on commission.

(2)

CERTIFICATE OF DEATH

"Certificate A

"Policy No 74789

"Life—Kumar Ramendra Narayan Roy

"Claimant—Rani Bibhabati Devi

"CITY OF GLASGOW LIFE ASSURANCE COMPANY

"Certificate of Death

*"To be granted by the Medical Practitioner who attended
deceased in his last illness*

"I, John Telfer Calvert, Lt-Col I M S, Civil Surgeon, Darjeeling, do hereby solemnly declare, that I have known Kumar Ramendra Narayan Roy for 14 days and have been his consulting Medical Attendant for 14 days, that I attended him in his last illness, that he died aged about twenty-seven years at Darjeeling at 11-45 o'clock P M on the 8th day of May, 1909 after an illness of 3 days, that the cause of his death was collapse following upon an acute attack of biliary colic (gall-stone)

"The above was inferred from symptoms and appearances during life, that the symptoms of the disease which caused death were first observed by me on May 6th, 1909, and that the attack became acute on the morning of the 8th and he died the same evening

"Signature—J T Calvert

Designation—Lt-Col I M S, Civil Surgeon

Place—Darjeeling.

Declared before me this seventh day of July,
1909Signature—W M Crawford, Justice of the Peace
and District Magistrate, Darjeeling

"N B This Certificate must be countersigned by a Justice of the Peace, Magistrate, Collector, or Judge of the place or district where the death took place, and must bear the Court's Seal when signed before any of the three last officials "

This was marked as J T C. 1 during the examination of Calvert on commission The certificate is written on a printed form of the Insurance Company, and the original should be referred to in order to see the portions in print and the portions in the handwriting of Calvert or of the attesting authority Crawford When Calvert says in cross-examination that "the whole of this" from the words "John Telfer Calvert" down to the word "Darjeeling" before the final declaration is in his handwriting (*Vol 2, p 205, ll 13-15*), he means by the "whole of this" the whole of the manuscript portion For easy reference, the material part of the document may be reproduced below with the manuscript portions in italics and the printed portions in capital letters

"I, John Telfer Calvert, Lt-Col, I M S, Civil Surgeon, Darjeeling,
DO HEREBY SOLEMNLY DECLARE THAT I HAVE KNOWN Kumar
Ramendra Narayan Roy FOR 14 days AND HAVE BEEN HIS consult-
ing MEDICAL ATTENDANT FOR 14 days, THAT I ATTENDED HIM

IN HIS LAST ILLNESS, THAT HE DIED AGED ABOUT *twenty-seven YEARS AT Darjeeling AT 11-45 O'CLOCK p m ON THE 8th DAY-OF May 1909 AFTER AN ILLNESS OF 3 DAYS, THAT THE CAUSE OF HIS DEATH WAS collapse following upon an acute attack of biliary colic (gall-stone)*

The above was inferred from symptoms and appearances during life, THAT THE SYMPTOMS OF THE DISEASE WHICH CAUSED DEATH WERE FIRST OBSERVED by me on May 6th, 1909, and the attack became acute on the morning of the 8th and he died the same evening "

It is admitted that the whole of the writing is in Calvert's hand. The document as printed in the Paper-Book leaves out the marginal directions contained in the form.

Both these documents were specifically included in the Interrogatories put by the defendants to Calvert (*Interrogatories 5-9, Vol 2, pp 201-202*), while Lindsay was asked about the condolence letter only (*Interrogatory 15, Vol 2, p 137*).

It will be remembered that Bibhabati Devi sets out both the documents *in extenso* in her written statement (*Vol 1, pp 174-175*).

DEFENDANTS' CONTENTION ON THE DOCUMENTS

Mr Chaudhuri maintains that there is nothing whatever to impugn the *bona-fides* of either of the documents which have been duly proved by Calvert, and that these cannot, therefore, but be the best evidence of the two facts mentioned therein, namely, the death of the second Kumar and the cause of his death. Death, he points out, was an accepted fact so in mentioning death Calvert could not be telling a lie. Secondly, as regards the cause of death, even supposing he had made a wrong diagnosis, he had admittedly seen the second Kumar on the 8th May, and if he had put in biliary colic in the letter, he must have done so because he believed it to be the cause of death. Mr Chaudhuri emphasises that no suggestion was put to Calvert in cross-examination that he had been "bribed" or "bought over."

UNUSUAL CHARACTER OF CONDOLENCE LETTER

As regards the condolence letter, the first thing that strikes one about it is its unusual character. It does seem to be extraordinary that a consulting physician like Calvert should go out of his way to write such a letter for no ostensible reason of his own. It is obvious that the letter must have been procured from Calvert, and that for a definite purpose. Calvert admits that he did not know Bara Kumar before the date of this letter; he had never met him. It was put to him in cross-examination that he had written it at the suggestion of the brother-in-law or the attending physician of the second Kumar. He did not remember, but added "The suggestion might have come from them" (*Vol 2, p 206, ll 11-15*). Mr Chaudhuri had to concede that it was not a spontaneous communication, but he would keep both the brother-in-law and the attending physician clear of it, and throw it on to Mukunda, the Private Secretary, long since deceased. The point he stressed

was that on the 10th May there could have been no motive to get from Calvert false evidence of death or of the nature of illness

If, as Mr Chaudhuri admits, the letter was secured from Calvert, I find it difficult to believe that neither Satyendra nor Mukunda had any knowledge of it. Whoever obtained it, he must have done so for a definite purpose, and if the letter be taken at its face value, the purpose was to get a statement from Calvert which would reassure Bara Kumar that "all that was possible had been done to save his brother's life", and that the patient had "received the greatest care and attention from those about him". In other words, the object was to get what might look like an unsolicited testimonial from Calvert, not for the Private Secretary alone, but also for the "friends" of the second Kumar "who were most solicitous concerning his condition". If Mukunda was the person to whom it occurred to get fortified with such a valuable weapon of defence, it seems to me unthinkable that he could have acted so selfishly as to have excluded either the "brother-in-law" or the "attending physician" from the benefit of it, or at any rate, kept them out of knowledge of such a signal certificate of good conduct he had secured for them.

SATYENDRA'S DENIAL OF KNOWLEDGE OF THIS LETTER

The insistence with which Satyendra disavows all knowledge of this letter is itself very significant, and is quite in keeping with the excessive anxiety he shows to disown connection with the procuring of other documents as well, such as the insurance affidavits of death and cremation, or the statements of the Darjeeling witnesses, or the statement of Haran Chandra Chakladar. Satyendra is not content with denying having procured any letter from Calvert before he came back from Darjeeling or at any time, or having had any letter of Calvert in his possession, but he says in fact that he had never seen this letter in original till it was shown to him during cross-examination (*Vol 16, p 432, ll 1-3 and ll 11-13*). Cross-examined about the letter, this is what he says

"Q—Are you not aware of the fact that Col Calvert was not acquainted with Bara Kumar at the time?

A—I do not know, but probably he did not know him

Q—Is it your suggestion that Col Calvert wrote that condolence letter to Bara Kumar quite independently—without suggestion of any kind?

A—I have come to know of this letter only when a copy of it was sent to me as I said. Mukunda might have suggested a condolence letter from Calvert, but it is my surmise

I cannot suggest how Col Calvert came to write in such praise of these (*sic*) about the second Kumar during his illness. Bara Kumar did not show me the letter at Jaidebpur. I never heard about it from him or anybody. I had no talk with Bara Kumar about it regarding the correctness of the second Kumar's death" (*ibid, p 535, ll 23-36*)

Dr Ashutosh Das Gupta's disclaimer of this letter is equally characteristic

"(Shown letter of Col Calvert set out in the written statement of defendant No 1) — — I remember the contents of the letter now

"Q —Did you know this before?

A —I heard about the letter

(*Question repeated*)

A —I did not know this before—that the letter said that the Kumar was well in the morning

To Court I heard about the letter and never knew its contents until now I did not know the contents of Col Calvert's "death, certificate" before today " (*Vol 16, p 276, ll 4-15*)

BIBHABATI DEVI'S "PRETENDED IGNORANCE"

Bibhabati Devi's cross-examination regarding the condolence letter may also be referred to

"Q —Do you know that on the 10th May a testimonial was secured from Dr Calvert on Monday following the death?

A —Tell me what it was about I do not know that any letter was taken from Dr Calvert that day

Q —Have you not heard till now that on the 10th May a letter was taken from Dr Calvert?

A —By whom?

Q —By some one or other of the party at your house?

A —I do not know even now

Q —Did you send a letter of Col Calvert dated 10-5-1909, to the Secretary, Board of Revenue?

A —Let me know the subject matter of the letter

Q —Any letter of Col Calvert of that date?

A —Addressed to whom?

Q —Never mind to whom?

A —I sent a copy of the condolence letter of Dr Calvert to Bara Kumar, to the Secretary of the Board of Revenue This copy was sent to me by Jogendra Babu, Secretary, after the arrest (*sic*—arrest?) of the plaintiff, and I sent this copy or a copy of this copy to the Secretary to the Board of Revenue That letter expressed sorrow at the Kumar's death The whole of the letter was read over to me and I remember this much

To Court My brother read it over to me In the letter to the Secretary, Board of Revenue, I said that the letter had been suddenly found during the course of a search in Bhowal *sherista* —this is, what Jogendra Babu had written to me "

(*Vol 12, p 227, ll 9-33*)

Pretended ignorance could no further go Well might one say "The lady doth protest too much, methinks"!

The defendants' story of how the condolence letter came to be discovered may be now given. According to their case, many letters of condolence came to Bara Kumar after the reported death of the second Kumar, which were all stitched up into a file with a cover marked "Condolence letters of second Kumar" and kept in the Private Secretary's office at Jaidebpur. Rai Sahib Jogendranath Banerjee, D W 310, was the Private Secretary, and his evidence is that after the plaintiff's declaration of identity he was ordered by the Manager to search for papers connected with the Kumar's illness and death, and in the course of such search his clerk Abani Mohan Banerjee discovered this file. On looking into the file the Rai Sahib came across this particular letter from Calvert which was in fact the only letter he found in it touching death and illness, the rest being all simple letters of condolence. He thereupon showed it to the Assistant Manager and the Manager, and by the direction of the Manager, sent a copy of it to the Collector and a copy to Bibhabati Devi. At the Collector's request the original was afterwards sent to him (*Vol 15, p 443, ll 12-30*). The witness adds that the condolence letters were all answered, and he would write "replied" on them to show that this had been done, and he proved a similar endorsement "Replied 20-5-09" on Calvert's letter as being in his handwriting (*ibid, ll 31-36*). The clerk Abani, D W 324, has been examined and confirms this evidence (*Vol 16, p 33, ll 13-24*). The letter by which Bibhabati forwarded a copy of this document to the Board of Revenue and the acknowledgment by the Board are both on record (*Exs Z(260) and Z(258), Vol II, pp 319 and 321 respectively*). The correspondence between the Manager and the Collector regarding this letter (certain initials and endorsements on which only were proved), will be found in the *Appendix* at pp 246-249.

Mr Chaudhuri points out that the first suggestion of the plaintiff was that this condolence letter came into existence at a much later stage than the date it bears and that the endorsement on it "Replied 20-5-09" was fabricated, but this suggestion, it is said, was afterwards given up when it was shown that these words were to be found in the photographic copy of the letter which had been kept on the record before the original was sent to England for the purposes of the examination of Calvert and Lindsay. In this connection Mr Chaudhuri calls attention to two petitions filed on behalf of the defendants in the court below on the 22nd July, 1935, putting on record the plaintiff's case as made by his learned counsel to the effect, first, that this letter might have been ante-dated and procured at any time after the arrival of the plaintiff and before the examination of Calvert (*Vol 14, p 417*), and secondly, that all correspondence addressed to the eldest Kumar including the letters of condolence had been sent to the Bara Ranı long before 1921 (*ibid, p 418*). By a further petition on the following day the defendants filed a number of condolence letters purporting to come out of this file, which were in addition to condolence letters produced by them at a much earlier stage (*ibid, p 440*). Mr Chaudhuri refers to the order (*No 1116*) which the learned judge recorded on the defendants' petition on the 22nd July, and was as follows

"As to the petition filed today touching the case as to Ex J H L 4 (i.e. the condolence letter), the learned counsel for the plaintiff says, today as to this Ex J H L 4 that the letter does not appear to have existed on the date it bears. I take his case to be exactly what he says, though on the 18th he threw out a certain suggestion as to when it might have come into existence, and did not, while making those suggestions, limit them to a point of time before Bara Kumar's

death Learned counsel says that he does not resile from the general position taken up on that date, though he does not commit himself to a definite date " (*Vol 1, p 85, l 30—p 86, l 3*)

The plaintiff's answer was given in two petitions filed on his behalf, one on the 22nd July and the other on the 24th July, 1935 (*Vol 14, p 419 and pp 441-442*) It was pointed out that counsel for the plaintiff was not counsel for the Bara Rani, but from such information as was available, it appeared that all letters addressed to Bara Kumar including letters of condolence had been sent to the Bara Rani by the Court of Wards before 1921 Objection was also taken to the defendants filing any further condolence letters at this stage in contravention of the court's order No 734 of the 29th September, 1934 (*Vol 1, p 59 and Vol 10, pp 406-412*), particularly as the plaintiff had already closed his evidence and there was no chance of his refuting the case which the defendants were now seeking to make

The condolence letters and telegrams produced by the defendants and admitted in evidence will be found in *Vol 1, between pp 404 and 448* .

WHEN WAS THE CONDOLENCE LETTER WRITTEN?

I do not think it has been made out that Calvert's letter was not written on the date it bears, namely, the 10th May, 1909 No such suggestion was put to Calvert by the plaintiff, on the other hand, he was cross-examined on the footing that he had written it at the instance of Satyendra and Dr Ashutosh Das Gupta, which must have been before they left Darjeeling on the 10th May This does not, however, dispose of the question as to whether the letter was received by Bara Kumar at the time in due course, or as the plaintiff suggests, it was reposing in the custody of Satyendra till he caused it to be found among other papers at the Private Secretary's office at Jaidebpur Calvert was not asked by either party if he had sent the letter by post, or made it over to one of the inmates of "Step Aside" for delivery to Bara Kumar The endorsement on the document "Replied", bearing date 20-5-09, if it was made at the time in the usual course, would no doubt support the defendants' case, but as to this, it was definitely put to Rai Sahib Jogendranath Banerjee in cross-examination that this writing was of a much more recent date the ink looked comparatively fresh, while the writing in the body of the letter was distinctly more faded and discoloured the writing, again, was with a fine pen which was unusual with the Rai Sahib who admits he preferred broad nibs (*Vol 15, p 517, ll 17-32 See also Abam, Vol 16, p 39, ll 1-5*) The suggestion was, of course, denied by the Rai Sahib, but unfortunately he is a witness whose evidence neither carries conviction nor appears to have the ring of truth in it A very look at the document will show the difference in the ink between the body of the letter and the endorsement, and yet he denies this obvious fact It may be that the words "Replied 20-5-09" were there when the original letter was sent to England, as appears from the photograph to which Mr Chaudhuri referred, but this does not show that they must have been there from the very beginning

It was also suggested to Rai Sahib Jogendranath Banerjee that the endorsement was not in his handwriting at all He had to admit that the "5" in "20-5-09" was written in a different manner from how he would write it now He was shown a number of other condolence letters and telegrams

produced by the defendants, which also contained similar endorsements "replied" (*Ex 373, and Ex 373 (1)—Ex 373 (30)*) Of these there was only one, a telegram from Mr Lyon to Kumar Ramendra Narayan Roy, *Ex 373 (11)*, (*Vol I, p 434*), the endorsement on which he could definitely swear to as being in his handwriting (*Vol 15, p 520, ll 23-24*) As regards the endorsements on the other documents of this series, the handwriting in *Ex 373 (5)*, *373 (9)*, *373 (10)*, *373 (12)*, *373 (15)*, *373 (16)*, *373 (17)*, *373 (18)*, *373 (27)*, *373 (28)* and *373 (30)* looked like his, but he could not swear to it, while he positively denied his handwriting in the rest (*ibid, ll 14-36*) The witness could not help stating that the "5" in Calvert's letter did not resemble the "5" in the telegram from Mr Lyon (*ibid, ll 36-37*) Shown *Ex Z (205)*, Calvert's letter, he was asked

"Q Do you usually write "5" like that? (*Pause*)

A Can't say if I wrote that sort of "5" usually " (*ibid, p 521, ll 12-14*)

The whole of the cross-examination of this witness regarding the handwriting of these endorsements ought to be read in order to appreciate the value of this evidence Speaking for myself, I am unable to say that the plaintiff has not laid a foundation for the suggestion that the endorsement in Calvert's condolence letter was neither a contemporaneous writing nor in the hand of Rai Sahib Jogendranath Banerjee

In her letter bearing date the 5th June, 1921, by which Bibhabati Devi forwarded a copy of the condolence letter to the Board of Revenue, *Ex Z (260)*, (*Vol II, p 319*), all that she says is that "the letter was discovered in the course of searching the file of old correspondence by the Manager at Jaidebpur"—not, be it observed, the "Condolence file" of which so much is made by other witnesses It is significant that the Manager's letter to Bibhabati Devi, which may be expected to have given some information as to how, where, or by whom the letter was discovered, has not been produced by the defendants (see the cross-examination of Rai Sahib Jogendranath Banerjee, *Vol 15, p 521, l 29—p 522, l 22*)

WHERE WAS THE CONDOLENCE LETTER?

The real question is whether this condolence letter was at the Private Secretary's office in the Rajbari at Jaidebpur from before May 1921 when it is supposed to have been unearthed for the first time by the Private Secretary's clerk Abani (*D W 324*) On the case of either party, the letter was not sent to Bara Ram in 1917, when, it will be remembered, she asked for all the private papers of her deceased husband which had been lying in the Private Secretary's office to be sent to her (see *Vol II, pp 73, 74 and 174*) It is, however, admitted by the defendants' witnesses that if this letter had been found at the time, it would have been sent to Bara Ram

Thus, Abani says

"If this letter had been found when Bara Ram asked for Bara Kumar's personal letters, it would have been sent then When she asked for these letters we searched for them "

(*Vol 16, p 38, ll 36-39*)

Mohini Mohan Chakravarty, the Assistant Manager, also says this in cross-examination

"I do not suggest that in 1921 letters addressed to Bara Kumar were at Jaidebpur but the condolence file was with Jogendra Babu. So Jogendra told me, and he showed the file to me. I do not remember if the letters in that file were addressed to Bara Kumar."

(Vol 14, p 412, ll 35-38)

Again

"I do not know whether all papers and letters addressed to Bara Kumar were sent to Bara Ranı long before 1921" (*ibid*, p 413, ll 6-7)

Rai Sahib Jogendranath Banerjee also in a manner admits that the condolence letters would have been sent to Bara Ranı, if these had been found at the time after search

"We had no objection to send the condolence letters to Bara Ranı. I thought it necessary to search for documents in my office before sending the papers wanted by Bara Ranı. At that time I did not find the condolence file after search" (Vol 15, p 519, ll 24-27)

The evidence of this witness regarding the condolence letters is indeed a study in prevarication

On the evidence as it stands it seems to me to be fairly clear that the condolence letter was not at Jaidebpur in 1917 otherwise it would have been sent to Bara Ranı. Admittedly a search was made in the Private Secretary's office at the time, and it is difficult to believe that such a file, if there was one, would have been missed. It is true that the defendants have produced in court a number of condolence letters and telegrams, but there is nothing to show that these came out of the file of "second Kumar's Condolence letters" in which Calvert's letter is supposed to have been found. Mr Chaudhuri did not invite our attention to the statement of a single witness on his side who had said so, though, if the defendants' case is true, the existence of this file as the repository not only of this letter from Calvert, but of other messages of condolence, must have been known to them from May 1921 at the latest, and they must have known as well the plaintiff's case regarding this document which they were called upon to meet. It is only necessary to add that though their witnesses talked so often of the condolence file, the defendants do not appear to have produced the file, as one would have expected them to do at the very first stage when they filed the *Ex 373 series*. As already stated, they no doubt produced some more condolence letters on the 23rd July, 1935 (see their petition of that date, Vol 14, p 440), but the plaintiff very rightly objected to their being taken in at such a late stage. If such a Condolence File did at all exist, the defendants' conduct in respect of it would seem to be quite on a par with what they did in connection with the Darjeeling Sanitarium Condolence File. Then, again, if it is the defendants' case that none of the condolence letters which had been received by Bara Kumar were sent to Bara Ranı in 1917, nothing would have been easier for them than to prove this fact by producing the list, admittedly kept by the Manager, of the documents forwarded to her (*see Ex 65, Vol 11, p 74*), but this they did not choose to do.

To put the matter on no higher basis, it may well be stated that the origin and production of Calvert's condolence letter are both shrouded in mystery, and this is a circumstance which cannot be altogether left out of account in assessing the evidentiary value of the document on which the defendants so strongly rely. There still remains the question which was pointedly put by Mr Chaudhuri: why should Calvert, against whom there was no suggestion of bribery or corruption in cross-examination, be writing a false letter regarding the death of the second Kumar and the cause of his death? Even if it be supposed that the persons who procured the letter from him had an ulterior object in view, that they wanted it to serve as a screen for their own misdeeds, that would be no reason for Calvert to be knowingly making false statements in their interest, unless he was in conspiracy with them, of which, however, it was said, there was no suggestion, far less any evidence.

This looks like a poser, but the best answer is the very condolence letter read with other contemporaneous evidence of an unimpeachable character, as well as some further documents emanating from Calvert himself.

WAS CALVERT PRESENT AT DEATH?

So far as the fact of death mentioned in the letter is concerned, Calvert doubtless believed in it, and it is not suggested either that he was making a deliberately false statement, or that those who got the letter from him were seeking to procure false evidence of death. The plaintiff's case is that Calvert was not actually present at the time of death, and any statement of his regarding death, whether in this letter or in his certificate of the 7th July, 1909, must have been based on reports which had been made to him and which he had no reason to disbelieve, having regard to what he had himself seen of the patient. In this letter there is nothing said by Calvert to show that he was present at the time the second Kumar is supposed to have died. Neither is there any such statement in the certificate of death, *Ex Z(111)*, (*Vol I, p 178*). In his examination-in-chief, Calvert was of course very definite about it.

Q—You have signed the certificate of the second Kumar's death. Were you quite satisfied of the fact of the second Kumar's death?

A—Absolutely certain.

Q—How?

A—The case progressed steadily worse during the day, and he finally collapsed late at night and died. The progress was uniformly downhill until the last when it was sudden.

Q—Did you see the body after death?

A—I saw the man dead and after some time I left.

Q—Were you satisfied that life was extinct?

A—Perfectly satisfied. (*Vol 2, p 203, ll 21-31*)

Mr Chaudhuri made a great point of the fact, as he said it was, that the witness was not at all cross-examined on these answers, and he contended accordingly that this evidence must be accepted as unchallenged. I am afraid, Mr Chaudhuri is wrong. In support of his case that Calvert was not present at the time of death, the plaintiff relies strongly on Calvert's letter to Lindsay of the 3rd August, 1921, *Ex Z(127)*, (*Vol II, p 350*), and this was expressly put to the witness in cross-examination (*Vol 2, p 206, ll 16-18, p 207, l 1 and ll 15-20*), after which he was asked

"Q—Do you remember if Mr Lindsay asked you if you were present at the death of the Kumar?

A—To the best of my belief he asked me if I recollected the death of the Kumar. He was writing 11 years after the death took place.

Q—Did Mr Lindsay ask you if you were present at the death of the Kumar and if you saw the body after death?

A—It is quite possible he may have done so.

Q—If Mr Lindsay did enquire of you if you were present at the death of the Kumar and if you saw the body after death, what was your answer?

A—My answer was, I recollected very well his death, but at the moment I could not remember with certainty whether I was present at the moment of death or not.

I don't remember any question being asked as to seeing the body after death.

(Mr S N Mukerjee (plaintiff's counsel) says the witness's answer shows the existence of a letter from Col Calvert in answer to Mr Lindsay, and he calls for that letter.)

(Mr Pringle says that the letter has never been called for, and this is not the time to call for it.) (Letter not produced.)

(Mr Pringle produces a "brief" copy of a letter which he hands to Mr S N Mukerjee for perusal. Marked for identification "X").

Q—"X" shown to witness. Is that like the letter you wrote to Mr Lindsay?

A—Yes, to the best of my belief this is a copy of the letter I wrote to Mr Lindsay. This letter is dated 3rd August, 1921. To the best of my belief, nothing happened from the 3rd August, 1921, until I heard from Mr Hunter.

Q—Did anything happen after you heard from Mr Hunter to help your memory as to the events in Darjeeling?

A—When I saw that I had given a death certificate specifying the time and date of death, I recollected the scene of the death. Previously I had some recollection of the hour, but the fixing of the exact time brought that remembrance back again."

(Vol 2, p 207, l 21—p 208, l 24)

Again

"Q—Were you further told (i.e., in the statement of the case supplied to him) that according to the recollection of the family physician you left the Kumar's house some time after his death and it was not a case of suspended animation?"

A—I remember the first part I don't remember anything about suspended animation" (*ibid*, p 209, ll 18-22)

It is futile to contend after this that there was no cross-examination of the witness, as to his supposed presence at the hour of death

NO INDEPENDENT RECOLLECTION

The letter to Lindsay has been already set out in full, and as I have said before, there is no reason for accepting Calvert's recollection of 1931 as more reliable than that of 1921. In his present evidence Calvert no doubt attempts an explanation by suggesting that the specific mention of the time and date of death in the death certificate brought back to his mind a vivid picture of the scene of death not only, however, is this a most unconvincing explanation, but it is hard to reconcile it with his own answer previously given, when asked whether he had "any independent recollection of the facts mentioned in the J T C I apart from the certificate itself"

"A—I have a very good recollection because the death of the Kumar made a great impression upon me at the time in that I thought it was an unnecessary death, and that had he agreed to the treatment his death need not have occurred at that time, he being a young man. I remember without seeing the certificate that he died about midnight. From the fact that I have written 11-45 P.M. on the certificate, I am quite certain that the death occurred at that time. I would not have taken any hearsay evidence" (*Vol* 2, p 205, ll 25-34)

He adds

"I was present at any death of which I have given a certificate in Insurance cases or else I saw the dead body after"

(*ibid*, p 206, ll 4-5)

This amounts to no more than saying that as he would not give a death certificate without being present at the death or seeing the dead body afterwards, he must have been present at the death of the second Kumar, because he had given a certificate. In other words, this was not a statement of fact he was making from personal knowledge, but at best an inference from the fact of the certificate itself, which, however, it will be seen, is wholly silent as to whether he was or was not present at the time of death

CALVERT'S LETTER TO LINDSAY

In his letter to Lindsay, not only does he state quite clearly, "I cannot now be certain whether I was present at the moment of his death", but adds, "I saw him shortly before it in a state of profound collapse", and further, that on his last visit, the Kumar's Bengalee medical practitioner was present and arrangements were made for Col Macrae to see the patient in consultation the following morning. The last mentioned facts were obviously facts about which he was "certain", and the reasonable impli-

cation is that Calvert left the Kumar before death when he was in a state of profound collapse, and after arranging for calling in another consultant the next morning in case the patient should still survive. The proposal to call in Col Macrae the next day is admitted by Dr Ashutosh Das Gupta (*Vol 16, p 343, ll 36-37*)

Lindsay's letter to Calvert to which *Ex Z(127)* was an answer has unfortunately not been produced by the defendants. But as already seen, Lindsay had a copy of the death certificate with him at the time, and it is not a violent assumption to make that Lindsay sent a copy to Calvert when he was writing to him in connection with the enquiry regarding the second Kumar's death and illness. Lindsay, of course, throws no light on this in his evidence: he did not remember having received any letter from Calvert, far less having sent him any questionnaire (*Vol 2, p 148, ll 31-34*). His recollection did not revive even after he was shown a copy of Calvert's letter (*ibid, p 151, ll 28-35*). Calvert's recollection is perhaps slightly better, but all that he says is that apparently Lindsay did not send him a number of questions, or else he would have answered them categorically. At first he thought Lindsay had done so, but he could find no trace of any such letter. He had asked for a copy of the correspondence between him and Lindsay to be sent to him to refresh his memory, but he was given only a copy of his letter to Lindsay and no other paper (*Vol 2, p 206, l 20—p 207, ll 1-2*). If, as seems very probable, Calvert was in possession of the death certificate or of its contents at the time he was writing to Lindsay in August, 1921, the particular explanation which is now given for remembering facts which he did not then recollect, becomes wholly meaningless.

CONDOLENCE LETTER NO CONFIRMATION OF DEATH

Mr Chaudhuri admitted an "inconsistency" between the condolence letter and the letter to Lindsay, but said that it was not a material discrepancy, and made a grievance of the fact that the contradiction had not been put to the witness under s 145 of the Indian Evidence Act. There is, however, no merit in this point: it is not a question of contradiction at all, seeing that the condolence letter contains no statement of Calvert being present at the time of death, any more than of the hour of death. In any case, having all but withheld the letter to Lindsay during the examination of Calvert and having in fact examined him in suppression of it, it is not for the defendants to raise any such objection. In my opinion, the cross-examination to which Calvert was subjected regarding this letter was more than sufficient for the purposes of the plaintiff.

Realising the obvious implication of Calvert's letter to Lindsay, Mr Chaudhuri was driven to suggest that all that Calvert meant to say was that he might not have been present in the second Kumar's room at the very moment of death, but if I may use once again the expressive phrase of Satyendra, this was a "suggestion of despair."

So far, therefore, as the condolence letter merely mentions death, and not that Calvert was present at the time of death, I do not think the document can be supposed to hurt the plaintiff at all. As regards the fact of death itself, the letter, if anything, helps the plaintiff's case to a certain extent. It clearly emphasises that the "death" of the Kumar was both sudden and unexpected: it says that the "exacerbation of his illness" came on "suddenly", and also that it "terminated quickly". According to the

defendants, this sudden exacerbation occurred at about mid-day, and the "quick termination" thereafter would be more in accord with death at dusk than with death at midnight

As regards the cause of death, it is also difficult to follow how the statements in the condolence letter, so far as they go, are of any assistance to the defendants. In the first place, the letter does not mention biliary colic, but only "colic", which, as is well known, is a somewhat vague term applied to spasmodic paroxysmal pain situated in the abdomen (*Savill's Clinical Medicine*), and is used by medical men to describe the pain which occurs, not only in intestinal, renal or biliary colic, but also in other abdominal disorders, such as enteritis or dysentery, of which, as any text-book on Medicine will show, "colicky pain" is most often a marked symptom. On a plain reading of the letter, I am unable in fact to find anything in it which may rule out enteritis or dysentery, or even arsenical poisoning in which, as already shown from Price, abdominal pain of a griping or a colicky type occurs as the poison is passed on to the intestines.

If the "colic" referred to in the condolence letter be supposed to mean biliary colic, as the defendants contend, it is only necessary to point out that though it may fit in with the two later statements of Calvert,—the death certificate and the letter to Lindsay,—it is contradicted by the admitted prescriptions

OR OF CAUSE OF DEATH

There are other indications in the condolence letter which seem definitely to support the plaintiff's case. It will be seen that the letter attributes the sudden death to "a little over-confidence" on the part of the Kumar, which is more fully explained in the concluding portion "he had mild attacks of this nature before, and it was his recovery from these which prevented him realising the serious nature of the last one before it was too late." This information regarding the previous mild attacks could only have been derived by Calvert from the person who went to him for this "testimonial." Calvert must have been puzzled himself as to the cause of death, he had observed certain symptoms and treated for them, but was hardly able to account for the "quick termination" of the illness, and all that occurred to him as a likely theory was "over-confidence" on the part of the patient. He was obviously not in a position to declare at this stage that it was a case of biliary colic. It is also stated in the letter that the "colic quickly ceased under the hypodermic medication"; but death supervened because the system had received a "shock in the interval." The injection was apparently given not long after the colic had come on "in a most intense form", as the letter says, "the shock" must, therefore, have been "received" by the system long before this particular attack, which is supposed to have sent the Private Secretary "round the station" "with praiseworthy zeal" in quest of Calvert. This attack coming on "later in the day" is in fact described as a "relapse", showing that the earlier attack must have been in an equally "intense form", and as the only other visit mentioned in the letter was a visit on that morning, it follows that the Kumar's condition at the time could not really have been "normal" or in any degree satisfactory as the defendants would now have us believe. On Calvert's own statement in this letter, he must have found the Kumar in such a condition on his morning visit that he thought it necessary to suggest an injection—according to him—the only "right treatment" for an attack of "colic" "in a most intense form." The Kumar's refusal of such

Kumar before the 6th May, and equally untrue that he had seen biliary colic before the 6th. It follows that Calvert's statement in the affidavit that he was the Kumar's consulting medical attendant at Darjeeling for 14 days must also be rejected as an inspired falsehood (*Vol 18, p. 322*)

"INSPIRED FALSEHOODS"

As regards the date, and particularly the hour, of death, mentioned in the affidavit, it seems to me to be impossible to accept this as an independent statement of Calvert. I have no doubt whatever that he put in these particulars as they were supplied to him by his informant, which it may be assumed he believed at the time. Here, again, it is not necessary to suppose that he was knowingly making a false declaration. If, as I hold, Calvert was not present at the moment of death, he could not possibly give the precise hour from personal knowledge, and as he kept no notes and no diary, the information could have been recorded by him only from hearsay.

EXPLANATION OF "BILIARY COLIC" IN DEATH CERTIFICATE

So far as the mention of biliary colic (gall-stone) as the cause of death is concerned, this must have been Calvert's own statement, and not due to any suggestion or inspiration from some other source. If gall-stone was the real cause of death, it would not, of course, be difficult for him to remember the fact two months later, and one would not be justified in brushing aside his recollection on the ground of lapse of time. The real answer would be only if it could be established on other evidence, not only that the illness was not gall-stone, but that Calvert had not and could not have even wrongly diagnosed it as such. On this point there is, first, his own condolence letter written shortly after the date of supposed death, and then his own evidence coupled with that of the contemporaneous prescriptions and telegrams. The condolence letter, as I have already explained, shows that Calvert at that stage was not sure of anything more than mere "colic",—not biliary colic at all, far less the particular variety of it in which a stone gets impacted in the cystic duct, which is the specific case he came to make afterwards in his evidence. As regards the telegrams and prescriptions, which I have also fully discussed before, the indications, taken as a whole, are not only not in favour of biliary colic, but definitely against it, and Calvert's evidence shows that his treatment could not have been directed to biliary colic.

Calvert's statement in the affidavit can, therefore, be interpreted only as an attempt on his part to give a definite shape to what was really nebulous in his own mind. He had undoubtedly been called in as a consultant to treat the second Kumar, and whether in writing a letter of condolence to the senior member of the family, he might or might not have wished to commit himself on the point, he could not help being more definite when called on to state the "cause of death" in the prescribed declaration form of the insurance company. Not to have been able to particularise the cause of death to the insurance company would have argued a degree of incompetence which no doctor, far less one in Calvert's position, would be prepared to face. On the other hand, if a physician of his standing mentioned a particular illness as the cause of death, there need have been no fear that his statement would not be unquestioningly accepted. There is no evidence that Calvert had heard or been told at the time of any rumours touching the death or cremation of the second Kumar, or had any other reasons to be specially on his guard in giving the certificate, or to anticipate that he might be called upon at any

stage to justify what he stated in it regarding the illness or cause of death of his patient

It will be observed that biliary colic (gall-stone) takes shape for the first time in this affidavit of death, and once it did so, whatever this might have been due to, it is only natural that it should persist in this form in all later stages throughout. This would explain the mention of biliary colic and gall-stone in Calvert's letter to Lindsay, and also account for his trying to adhere to this case in his evidence. Mr Chaudhuri made a great point of the fact that Calvert was not cross-examined on the statements he made in this behalf in his examination-in-chief, but this is true only in the sense that learned counsel for the plaintiff did not tell the witness in so many words "I put it to you that it is not a fact that the illness was gall-stone or that the cause of death was collapse due to colic and pain and the stone impacted in the duct", these being the witness's words in examination-in-chief, (*Vol 2, p 203, ll 19-20*) But reading the cross-examination as a whole, there can to my mind be no doubt that the whole trend of it was to challenge the statement of Calvert as to the nature of the illness or the cause of death. I have no hesitation in saying that Mr Chaudhuri's objection was really one of form, and not of substance at all.

As to the further point made that no suggestion of dishonesty or corruption was put to Calvert in cross-examination to discredit his condolence letter or certificate of death, all that need be said is, in the first place, that for the purposes of the plaintiff's case it was not necessary to ascribe dishonesty or corruption, and secondly, that, even if this was the underlying suggestion, I see no reason why it should have been directly put to him so long as the plaintiff was able to establish that the documents in question could not be relied on at all. This, I hold, the plaintiff has been able to do.

CALVERT'S THREE DOCUMENTS COMPARED

Taking all the facts and circumstances into consideration, it is difficult, therefore, to attach to Calvert's condolence letter and affidavit of death anything like the importance which Mr Chaudhuri claims for them as contemporaneous documents. The three documents of Calvert—these two, and his letter to Lindsay—seem in fact to destroy one another, and it may be interesting to give a comparative statement showing some of the points in which they differ or agree.

- (i) According to the defendants the condolence letter suggests that the Kumar was "better" on the morning of 8th May, but the affidavit of death states that on this morning "the attack became acute"
- (ii) According to the condolence letter the hypodermic injection was given late in the day on the 8th, but none at all could be given according to the letter to Lindsay
- (iii) As regards the Kumar's refusal of hypodermic treatment, the reason given in the condolence letter is his "over-confidence", but in the letter to Lindsay it is prejudice due to his mother having died after an injection
- (iv) The condolence letter seems to suggest that Calvert was called in for the first time on the morning of the 8th, but the affidavit of death says that he was the Kumar's consulting medical attendant for 14 days

- (v) In the affidavit of death it is stated that the Kumar died "the same evening", but the letter to Lindsay says that he died "the same night", though rather inconsistently the specific hour 11-45 P.M. is given in the earlier part of the affidavit
- (vi) The letter to Lindsay expressly mentions vomiting and purging and non-retention of opium by mouth and rectum, but there is nothing said about this in the condolence letter
- (vii) All the three documents agree, however, in speaking of "collapse" —it being "profound collapse" according to the last one of them
- (viii) The condolence letter merely mentions "colic", but the other two documents both speak of biliary colic and gall stone not a word, however, is said therein about impaction of a stone in the cystic duct, which detail comes out for the first time in Calvert's evidence from his recollection

Before leaving this topic, I might just refer to an interesting fact it is that shortly after judgment in the Magistrate's Court in the Defamation Case acquitting the accused, in which, as already stated, Calvert's affidavit of death and prescriptions had come up for consideration, Bibhuti, a son-in-law of Jyotirmoyee Devi, whose full name is Chandra Shekhar Banerjee (P W 959), took it into his head to send to Calvert in England a copy of the judgment by a letter dated 13th September, 1923, which is *Ex Z(371)* (Vol III, p 348) "My intention", wrote Bibhuti, "in communicating to you these circumstances is that you may know how things were manipulated without your knowledge" This elicited from Calvert a laconic reply dated 8th October, 1923, which was tendered during Bibhuti's examination, but not admitted by the learned judge at that stage (*see Vol 11, p 28, ll 9-15 and p 32, ll 20-29*) The reply was placed before us, and was in these terms "I am much obliged to you for your letter of 13th September, 1923 and enclosure *It is certainly interesting*" Calvert was not asked about this letter in cross-examination, but apparently when he was writing this, he was still in the same state of mind as is disclosed by his letter to Lindsay of 3rd August, 1921

It may be worth while in this connection also to call attention to a fact already noticed, namely, that in writing to the "Englishman" of the 9th May, 1921, to contradict the report, which had appeared in that newspaper under the heading "Dacca Sensation" shortly after the declaration of identity, Satyendra merely stated that he was personally present at the time of the death of the Kumar and did not say anything about Calvert having been present as well, or even refer to Calvert's death certificate The only reference he made to Calvert in this letter was for the purpose of saying that he had attended the Kumar in his last illness, and the only death certificate mentioned was that given by Mr Crawford, Deputy Commissioner of Darjeeling (*see Satyendra's cross-examination, Vol 16, p 940, ll. 22-29*)

CRAWFORD'S CERTIFICATE

As regards this certificate of Crawford, which is dated the 8th February, 1910, and on which the defendants rely, if not to the same extent as on that of Calvert, it is impossible to pass it over without comment It states as follows —

"This is to certify that Kumar Ramendra Narayan Roy of Bhowal, Zemindar of the District of Dacca, aged about 27 years, stopped at

the house named "Step Aside", Darjeeling, and died there on the 8th day of May, 1909, from an acute attack of 'biliary colic' " (*Ex Z(113), Vol I, p 187*)

Crawford was admittedly nowhere near the second Kumar when he is supposed to have died, and yet he gives a certificate of death as if the facts stated in it were within his personal knowledge! Crawford said in cross-examination "I do not know who asked for it I do not remember at all the circumstances under which I gave the certificate, nor how the details came to be in it" (*Vol 2, p 226, ll 28-30*)

Mr Chaudhuri quoted from an old edition of Lyon's "Medical Jurisprudence", (*5th ed., p 122*) to show that no doctor would give a certificate of death without being actually present at the time of death or without seeing the body, and asked the court to infer from this that Calvert must have been present at the second Kumar's death because he did give a death certificate. Leaving aside, for the moment the fact that Calvert's certificate was given, not immediately after death, but two months later, here was, on the defendants' own showing, another person, who, though not a doctor, was still a responsible officer, and to boot a Justice of the Peace, giving a death certificate without pretending to know anything about the death! This only shows, say what Mr Chaudhuri might, how easy it must have been for his clients to procure certificates, and affidavits to order, and he must forgive the plaintiff if the plaintiff invites the court not to attach to these documents the sanctity which they might superficially appear to possess.

On the question of the second Kumar's illness, in addition to the evidence already referred to, the defendants have examined a number of witnesses besides Bibhabati Devi, Satyendra and Dr Ashutosh Das Gupta, such as Bepin Khansama (*Vol 14, pp 487-505*), Birendra Chandra Banerjee (*Vol 15, pp 314-377*), Anthony Morel (*Vol 2, pp 367-431*), Jagat Mohini (*Vol 1, pp 281-299*), and Shyamadas Banerjee (*Vol 1, pp 255-278*). The first three, Bepin, Birendra and Anthony Morel, were members of the second Kumar's party, who had gone with him to Darjeeling. Jagat Mohini was a local nurse, attached to the Victoria Hospital there, who was brought along by Dr Nibaran Sen to attend on the Kumar on the last day of his illness. Shyamadas was a cousin of Satyendra, who was a clerk in the Bengal Secretariat, and was at Darjeeling in May, 1909, staying at the Cutchery Building there, which was the official quarters for Secretariat clerks. The evidence of these witnesses, so far as the nature or course of the illness is concerned, is of little value, and Mr Chaudhuri himself has not laid much stress on it. They do not carry the defendants' case on this particular point any further than the principal witnesses, whose evidence has been already considered, but it will be necessary to refer to their evidence in connection with some other topics. It is enough to say that they are witnesses who do not inspire much confidence. One of them, Anthony Morel, as we have seen, actually spreads out the Kumar's illness over a period of 10 or 12 days.

CHANGE OF BED-ROOM ON 7TH NIGHT

In support of his case of poisoning, Mr Chatterjee on behalf of the plaintiff laid some emphasis on a fact stated by his client in his evidence regarding the conduct of Satyendra and Dr Ashutosh Das Gupta on the night of the 7th May, which these witnesses were afterwards compelled to admit in cross-examination, though under considerable pressure. It was

conduct, said Mr Chatterjee, which was wholly incompatible with innocence, and could not but be suggestive of a felonious design on the part of these two persons. The plaintiff, giving evidence at a time when he could not possibly anticipate what these witnesses of the defendants were going to say, made the definite case that following on the administration of some medicine by Dr Ashutosh Das Gupta at about 8 or 9 p.m. on the evening of the 7th May, he felt a burning sensation in his chest, vomited, and grew restless, and then began to scream in pain, but no doctors came that night (*Vol 4, p 101, ll 18-23, p 162, ll 11-15, and p 170, ll 8-10*). Satyendra and Dr Das Gupta, who of course could not, in view of *Ex 51(a)*, the arsenic prescription, eliminate pain altogether on the evening of the 7th, both tried to make out first that it was only slight pain, but, as has been pointed out before, they were constrained to admit later that the Kumar was really in very great pain, and yet neither Dr Calvert nor Dr Nibaran Sen was sent for. On the other hand, Satyendra and Dr Das Gupta went to bed as usual that night, sleeping in the same room as if nothing had happened. Dr Das Gupta's evidence on the point has been already quoted (*Vol 16, p 279, ll 35-37, p 284, ll 3-4, and p 334, l 32—p 335, l 5*). Reference has also been made to Satyendra's cross-examination to show how he struggled hard before admitting that the Kumar "rolled about in bed after dusk on the 7th in pain" (*Vol 16, p 496, ll 10-14*). He first stated to Mr Chaudhuri that the Kumar's bed-room was changed at his own suggestion possibly on the day before his death. This was done because, he said, when the pain would come on, the Kumar "rolled about in bed", and the cot he was lying in was too narrow, and the Kumar himself proposed that a wider bed should be spread on the floor of the adjoining room, which happened to be unoccupied (*ibid, p 428, ll 7-13*). In cross-examination he first said that no such pain occurred on the 6th, and further admitted that it was not his evidence that the Kumar rolled about in bed in the day time (*ibid, p 467, ll 39-41, and p 468, l 35*). Still he denied that the bed was removed on the night of the 7th (*ibid, p 468, ll 1-3*). It was later put to him—

"Q—You know perfectly well that the Kumar had to be removed on the evening of the 7th because his pain was terrible?"

He of course answered "No. So far as I remember, he was not removed on the evening of the 7th." He could not suggest, however, that the Kumar asked to be removed when he had no pain, and then forgetting his previous statement that the Kumar was removed at his own suggestion, said "He was removed as I thought the pain was going to be a big pain, and moreover he had been in the same bed for so many days, so that a change of bed would give him more comfort. I can't recall how long before this removal a change of bed occurred to him."

"Q—You know perfectly well that what you anticipated as big pain did come on?"

A—No big pain came on the 7th" (*ibid, p 475, ll 15-26*)

Finally, however, came the admission, already referred to, that the Kumar did roll about in bed after dusk on the 7th in pain.

So far as Satyendra himself was concerned, on the 7th night he went to bed as usual, i.e., at 10, and fell asleep at about 12 (*ibid, p 466, ll 31-32*).

It is not necessary to labour the point, which Mr Chatterjee wanted to make out of this evidence, as to whether or not this indicated a conspiracy to poison on the part of Satyendra and Dr Ashutosh Das Gupta, but there

can be no doubt that sufficient indications are given by both the witnesses which lend support to the account which the plaintiff gave of the night of the 7th May

It is perfectly clear, as the learned judge says (*Vol 18, pp 335-336*), that the Kumar was removed in pain from his bed-room to the next room during the course of the night, and this, as he points out, is in a way supported by the evidence of Shyamadas Banerjee, who came to see the Kumar at about 6-30 P.M. on the 7th evening and found him in great pain, and on receiving information in the early morning on the next day that the Kumar was restless on the previous night, went to see him that day on his way to office, and found him in "another room"—not the room where he had seen him before (*Vol 1, p 267, ll 11-14 and ll 20-23, and p 268, l 39—p 269, l 1*). It is also clear that neither Calvert nor Nibaran Chandra Sen came to see the Kumar on the 7th night, and he was left practically unattended by both Satyendra and Dr Ashutosh Das Gupta

On a review of the whole evidence on the subject, I have, therefore, no hesitation in accepting the conclusion of the learned judge on the first topic in the Darjeeling Chapter—the nature and course of the Kumar's illness. The illness was not biliary colic and the symptoms, which the Kumar developed from the 7th night onwards, were distinctly suggestive of arsenic poisoning

2 CAUSE OF THE KUMAR'S DEATH OR APPARENT DEATH

This really disposes of the next topic in this chapter—the cause of the Kumar's death or apparent death, but Mr Chaudhuri complains that the learned judge did not consider the question as to whether the Kumar actually died or merely fell into a comatose condition, which was mistaken for death, as an independent question of fact. I find a little difficulty in appreciating this comment, for the answer is to be found in the learned judge's treatment of the other particulars of the case. It is idle to expect that the plaintiff should be able to give positive evidence that at the moment the second Kumar is supposed to have died, life was not actually extinct, but that he exhibited false or deceptive signs of death. The best proof of this can only be the evidence of subsequent facts, which ultimately resolves itself into the evidence of identity, and as the plaintiff has sought to prove identity *alibunde*, it should, in my opinion, be sufficient if he can merely repel the defendants' evidence of death. This, I consider, the plaintiff can do, and has in fact done, by showing that the evidence which the defendants have adduced to prove death is not worthy of acceptance. The defendants have come forward with a definite story as to what caused the second Kumar's death, and to the extent to which that story is shown to be unacceptable, it must be taken to be advancing the plaintiff's case on the point. It cannot be said that, apart from the oral testimony of their witnesses, who have merely stated that the Kumar died, and from certain contemporaneous statements to that effect, the defendants have established any facts beyond all reasonable doubt, which must inevitably negative the plaintiff's case as a physical impossibility or improbability. Calvert, as already pointed out, no doubt said in his examination-in-chief that he was "perfectly satisfied" that "life was extinct" (*Vol 2, p 203, ll 30-31*), but this evidence would obviously have no value, if, as I hold, he was not actually present at the time of "death". The plaintiff has, on the other hand, succeeded in laying a

foundation in the evidence for the acceptance of his case as being not outside the range of probability. The medical authorities show that death seldom ensues as a result of the impaction of a stone in the cystic duct in biliary colic. Col MacGilchrist says that he has not come across a case of death by biliary colic (*Vol 9, p 363, l 28*), and Dr Bradley has never known of a case of biliary colic ending fatally (*Vol 11, p 353, ll 33-34*). It was also elicited from Calvert in cross-examination that the Kumar had some minor attacks on and off, finally culminating in his fatal seizure, which he was not anticipating (*Vol 2, p 219, ll 13-14*), and in re-examination he made it clear that it was not the attack that was unanticipated, but it was the fatal result of that attack, *because such results were rare (ibid, p 224, ll 22-23)*. In his condolence letter as well as in his letter to Lindsay, he again expressed a more or less similar view, namely, that the death was wholly unexpected. Calvert admitted that the Kumar had fallen into a state of collapse, and the chances of recovery after collapse were not wholly rare.

"Q—Do you agree that people can survive after collapse?"

A—Yes, it depends on what the collapse is due to. I also know of the recovery of pulseless patients, and I agree that acute arsenical poisoning brings collapse" (*ibid, p 220, ll 24-27*)

It is hardly necessary to refer to the evidence of Satyendra or Dr Ashutosh Das Gupta, both of whom of course say that Calvert pronounced the Kumar dead: the former is content with a mere statement to that effect (*Vol 16, p 428, ll 32-35*), but the latter gives a more graphic description of the matter.

"Q—How did you know that death had occurred?"

A—Dr Calvert examined his heart, pulse, abdomen and lungs, and said "Expired." Dr Calvert examined him for five or seven minutes or three or four minutes. Dr. Nibaran Sen examined the heart, pulse, abdomen, and put his finger at his nostrils to see if he was breathing—did all this for three or four minutes. I too examined the heart, pulse, abdomen, and found him dead" (*Vol 16, p 243, ll 24-29*)

Calvert himself did not vouchsafe these details. According to the nurse Jagat Mohini, it would appear that it was not necessary for Calvert to examine the patient so minutely in order to pronounce him dead. Her evidence is that "the condition of the Kumar suddenly took a bad turn" after Calvert had gone away for dinner on the evening of the 8th, and the Ram started crying, when Calvert was sent for, and he "came in great haste" at 10 or 11 P.M., and examined the patient. The Kumar was not yet dead, but was in his last gasp and was uttering a groaning sound from the throat.

"Q—When there was the groaning sound, where was the Doctor Saheb (Civil Surgeon)? Was he observing it?"

A—The Doctor Saheb was near by. On kneeling down and looking at the watch he was feeling the pulse; he was examining the chest and observing the breath. Everything was then finished" (*Vol 1, p 294, ll 18-37*)

As has been already pointed out and as will also appear more fully hereafter, it is difficult to accept the story of death taking place at about midnight or of Calvert being present at the hour of death, as deposed to by

these witnesses In my opinion, there can be no reason, therefore, for rejecting the plaintiff's case that the second Kumar passed only into a state of apparent death, merely because the plaintiff has not been able to adduce affirmative evidence on the point

3 HOUR OF ALLEGED DEATH

The next question to be considered is one of vital importance in the case, namely, the hour of death or supposed death of the second Kumar, for the whole of the plaintiff's story depends on whether it took place in the evening of the 8th May as opposed to midnight, the time alleged by the defendants I do not think the precise hour in the evening when this event occurred is very material, and in my opinion, the direct evidence on the plaintiff's side is not at all shaken, merely because of certain discrepancies in the timings given by the witnesses as to when they received the news of death, or turned up at "Step Aside" and saw the body, or saw or joined the funeral procession Such discrepancies are perhaps inevitable in the testimony of witnesses deposing to events years afterwards, and I should rather consider this to be a circumstance which goes to show that they are giving truthful evidence

The learned judge has, in my opinion, given overwhelming reasons for holding that the Kumar apparently died between 7 and 8 p.m. on the 8th May, 1909 (*Vol 18, p 355, ll 18-19, p 362, l 24, and p 364, ll 11-12*), and I may state at once that I see no ground for not accepting his conclusion

Mr Chaudhuri complains that the learned judge has arrived at his finding without taking into account the considerable body of oral evidence which the defendants have adduced to prove death at midnight, except referring to the evidence of Calvert and casually to that of Bibhabati Devi, but I am not at all satisfied that this is a legitimate criticism The defendants' oral evidence comes from two classes of witnesses those who say that they were present at "Step Aside" at the time of death, and others who are supposed to have received the news of death shortly after at their own lodgings Besides Bibhabati Devi and Calvert, the first category includes Jagat Mohini (*Vol 1, p 281, l 25*), Bepin Khansama, D.W. 140 (*Vol 14, p 491, ll 20-33*), Birendra Chandra Banerjee, D.W. 290 (*Vol 15, p. 318, ll 34-35*), Dr. Ashutosh Das Gupta, D.W. 365 (*Vol 16, p 243, l 2*), Anthony Morel (*Vol 2, p 378, l 29*), and last but not the least, Satyendra (*Vol 16, p 428, l 31*) The second group of witnesses includes two persons who were staying at the Lewis Jubilee Sanitarium, Rajendra Nath Sett and Tinkari Mukherjee, and two at the old Cutchery Building, Shyamadas Banerjee and Durga Charan Pal, besides one Kali Chhatrini, daughter of the *chowkidar* of "Step Aside", who lived with her father in the servants' godown at that house Rajendra Sett's evidence is that he received a note from Satyendra at about 1 A.M. in the night reporting the death of the Kumar (*Vol 1, p 301, ll 4-8*), and Tinkari Mukherjee says that he came to know of it from Rajendra Sett at 1 or 1-30 A.M. (*Vol 1, p 434, ll 5-16*) Shyamadas Banerjee in his turn says that he got the news from "Step Aside" at 1 or 1-30 A.M., and on going there shortly after, heard that the Kumar had died at 11-30 or 11-45 P.M. (*Vol 1, p 256, ll 8-17*), while Durga Charan Pal says he heard about the death from Shyamadas after midnight (*Vol 13, p 146, ll 25-30*) Kali Chhatrini, who was a very young girl at the time, states that her father woke her up at midnight to tell her of the Kumar's death, and speaks to a peculiar custom

to explain this unusual action on the part of her father "My father awoke me, as upon a death occurring children are not allowed to sleep. They have to be roused once and told, "A man is dead", before they go to sleep again" (*Vol 14, p 427, ll 1-5, and p 431, ll 6-16*)

As regards these witnesses, in the first place it is not correct to state that the learned judge has ignored them completely. In discussing the question of the time of death or of the cremation processions, he has in fact referred to the evidence of many of these, if not to their specific statements regarding the hour of death, as the following references, among others, will show —

- (1) Satyendra (*Vol 18, p 355, l 34 to p 356, l 10, p 357, ll 6-18, p 359, ll 1-15, p 362, ll 21-22, p 363, ll 5-6 and p 363, ll 13-17*)
- (2) Dr Ashutosh Das Gupta (*ibid, p 356, l 21, p 357, l 4, p 362, l 43, p 363, l 3 and p 364, ll 4-10*)
- (3) Birendra Chandra Banerjee (*ibid, p 357, l 4, p 363, ll 10-13 and p, 364, ll 1-4*)
- (4) Bepin Khansama (*ibid, p 363, l 10*)
- (5) Jagat Mohini (*ibid, p 363, ll 17-18 and 22-32*)
- (6) Rajendra Nath Sett (*ibid, p 385, ll 16-22*)
- (7) Shyamadas Banerjee (*ibid, p. 363, ll 32-34, p 385, ll 10-16*)

Secondly, so long as it appears that the learned judge has not omitted to consider the evidence of the defendants' principal witnesses on the point, one fails to see how his conclusion can be assailed merely because he may not have referred to every other witness who repeats the same statement and does not really carry the case any further, particularly in view of the concatenation of circumstances referred to by the learned judge which undoubtedly point the other way. There is nothing to show that the learned judge was unmindful of the evidence of these other witnesses, but apparently he was not prepared to accept their statements as independent corroboration of the time of death.

It is worthy of note that of the plaintiff's witnesses who give direct evidence as to the time of supposed death, the learned judge refers only to Ram Sing Subha, P W 967 (*Vol 11, pp 65-83*), though there are at least two other witnesses on the point to whom reference might equally have been made, namely, Chandra Singh, P W 968 (*Vol 11, pp 84-94*) and Mahammad Ashraf Alam, P W 980 (*Vol 11, pp 246-251*)

DEFENDANTS' DOCUMENTARY EVIDENCE

There can be no doubt that in support of their case of death at midnight, the defendants rely mainly on Calvert's affidavit of death and on his evidence in so far as it purports to accord with it. The affidavit mentions 11-45 P M as the specific hour of death, but for reasons already explained, it is hardly possible to attach any value to it as an independent statement of Calvert. As for his oral evidence, it obviously fails to carry conviction. He was asked if he had any independent recollection of the facts stated in the certificate of death, and his answer was that he remembered without seeing the certificate that the Kumar had died at about midnight, giving it as his reason for having "a very good recollection" of the facts, that the death of the Kumar had made "a great impression" upon him at the time in that he

thought that it was an unnecessary death. On seeing the certificate, he only "felt certain" that death had taken place at the precise hour mentioned in the document (*Vol 2, p 205, ll 25-32*). It is, however, remarkable that writing in 1921 in reply to Lindsay's enquiry, although there was then the same stimulus to his memory, namely, this "great impression" produced by the event, he could not still be certain whether he was present at the moment of death (*Ex Z (127), Vol II, p 350*). One finds it difficult, therefore, to disagree with the learned judge that when Calvert said that he had an independent recollection of the time of death, he was not telling the truth (*Vol 18, p 355, ll 12-13*).

Calvert's letter to Lindsay, as I have shown before, practically gives the lie to the defendants' story of death at midnight—by clearly establishing these facts among others

- (1) that Calvert was not present at the moment of alleged death,
- (2) that when he left after his last visit the patient was still alive, but "in a state of profound collapse",
- (3) that the Kumar's condition was so grave that it was arranged to call into consultation a senior physician Col Macrae,
- (4) that the consultant was not given a call that evening, but was to be brought only next morning, that is to say, only if the Kumar survived till then, and
- (5) that the Kumar died shortly after Calvert had left

Admittedly Calvert left in the evening—it may be, according to Bibhabati, only for dinner, with the idea of returning later, and according to Jagat Mohini, as we shall see, at about 6-30 P.M., only to be called back by reason of the Kumar's condition taking an unexpected turn for the worse

DIARY ENTRY

The defendants rely also on the entry made by Satyendra in his diary under date the 8th May, 1909 "Kumar Ramendra expired midnight" (*Ex 399 (1), Vol I, p 306*), but the diary stands self-condemned. It is only necessary to refer to the anxiety which Satyendra himself shows to deny the correctness of the statement he makes in the very next sentence where he writes

"4 doctors attended, one his family doctor Ashutosh Das Gupta 2 Rai Bahadur Nibaran Ch Ghosh (*sic*) 3 B B Sarkar, M.D. 4 Lt-Colonel Calvert. They were all attending when he died".

The presence of Dr B B Sarkar at the time of death would of course cut across the defendants' case as now made by them, and so Satyendra has no hesitation in saying in his present evidence that it is "false" that Dr B B Sarkar was attending when the second Kumar died (*Vol 16, p 477, ll 20-21*). As regards the entry in the diary, he says quite complacently that he wrote it "loosely" (*ibid, l 27*). This is only an euphemistic way of saying that Satyendra wrote what he knew to be false. Surely the defendants cannot be permitted to accept one portion of the diary and reject another, according as it suits or does not suit their present purposes. Mr Chaudhuri attempted a feeble explanation of this entry by suggesting that Satyendra was merely giving a list of the doctors who attended the Kumar in his last illness, not necessarily of those who were present at the actual time of death, but apart from the fact that the entry itself shows the contrary, such explanation is ruled out by the answer which the witness himself gave

when he said that it was "a list of doctors who attended the Kumar at the time of his death" (*ibid*, ll 34-35) In my opinion the diary is demonstrably such a mixture of truths and untruths that it would be no more safe to rely on it than on the evidence of the writer in support of the defendants' case of death at midnight

There is some further documentary evidence on the defendants' side which Mr Chaudhuri refers to as showing that death at midnight had got into contemporary records before there was any possible chance of anybody interfering with the same The learned judge has considered this evidence towards the end of the Darjeeling chapter of his judgment before he takes up the question of rescue (*Vol 18, p 393, ll 4-36*), but Mr Chaudhuri is apparently not satisfied with the way in which he deals with it Mr Chaudhuri seems to think that the learned judge simply "cuts through" this body of evidence by making a dash for the assumption of identity, but as I have already pointed out, he does nothing of the kind After referring to these documents, he in fact expresses his conclusion in terms which are quite definite and have nothing to do with the question of identity "All these facts", says the learned judge, "are swept away by the facts I gave which show that the apparent death was at night, and the body was taken out at night" (*ibid*, ll 35-36), meaning by "night" a little after dusk, as already stated by him

KALIGANJ SCHOOL RESOLUTION

One of these documents is a condolence resolution of the Kaliganj School Committee, of which, it is said, the second Kumar was President (*Ex Z(223) (2), Vol I, p 424*) The resolution which is dated the 10th May, 1909, no doubt mentions midnight of the 8th May as the hour of the Kumar's death, but apart from the fact that it would be very unusual to record the specific hour of death in a condolence resolution, the evidence as to how this information is supposed to have been received at Kaliganj, is, to say the least of it, of a most suspicious character The defendants have not examined anyone who was present at the meeting at which the resolution is said to have been passed, but one Rai Sahib Umesh Chandra Dhar, D W 348, is called to prove that the proceedings are in the handwriting and over the signature of a person named Protap Chandra Kar, who is supposed to have presided at the meeting and has since died (*Vol 16, p 147, l 32 and p 148, l 2*)

It is true, as Mr Chaudhuri points out, that there was no cross-examination regarding this handwriting and signature, but the witness is otherwise so thoroughly discredited that I do not think the absence of such cross-examination can really make any difference Before he gave his evidence in court, the witness had been examined on commission (*Vol 16, p 149, l 6*), and he admits that in his examination-in-chief on commission he said that he was at Kaliganj at the time of the second Kumar's death and that a telegram had then come to the Naib of the Kaliganj cutchery from the Raj Estate office at Jaidebpur, conveying not only the news of death but the further detail that the death had occurred at midnight, and that on receipt of this telegram the Naib read it out to the witness (*ibid*, p 155, ll 11-15, and p 156, ll 24-26 See also his previous deposition, *Exs 392 and 392(1), Vol. III, pp 394 and 395*) It was, however, elicited from him later in cross-examination that there was no telegraph office at all at Kaliganj at the time one came to be established long afterwards when the Tangi-Bhairab Branch line of the Assam-Bengal Railway was opened, which, according to the

witness, was some 15 or 16 years before he was deposing (*ibid*, p 159, ll 15-17) After this, very little remains of the evidence of this witness, and whether or not there was any cross-examination regarding the handwriting or signature of Protap Chandra Kar in the proceedings book, I cannot say that the learned judge was wrong in refusing to place any reliance on the condolence resolution It is worth pointing out, as the learned judge notes (*Vol 16*, p 153, ll 22-23), that the proceedings book itself from which the resolution was produced was in a tattered condition with the covers torn off and the pages loose

It is said that the proceedings were confirmed at a subsequent meeting of the School Committee held on the 12th May under the chairmanship of one Parsanath Nag The minutes of this meeting (*Appendix Volume*, p 242) have not been proved, but only the signature of the chairman through the same witness who proved the proceedings of the 10th May (*Ex Z(223) (3)*, *Vol. I*, p 445) Mr Chaudhuri made a point that this Parsanath Nag was examined as a witness by the plaintiff as P W 61 (*Vol 4*, pp 475-480) after D W Rai Sahib Umesh Chandra Dhar had already in the course of his commission evidence disclosed the proceedings of the 12th May, and still the plaintiff made no attempt to obtain from him a denial of his signature appearing in these proceedings as chairman of the meeting It will be seen, however, that P W 61 is one Parsanath Nag Biswas who was President of the Buktearpur Union Board, and not Parsanath Nag, member of the Kaliganj School Committee, who is alleged to have presided at the meeting Rai Sahib Umesh Chandra Dhar himself admits that these two were different persons

"I know Parsanath Nag of Buktearpur His house is a little less than 3 miles from my house I do not remember his father's name He was a member of the School Committee There is another Parsanath Nag Biswas He was President of the Buktearpur Union Board" (*Vol 16*, p 148, ll 3-7)

'Curiously enough, this witness identified the signature in the proceedings of 12th May as that of Parsanath Nag Biswas' (*ibid*, p 148, ll 7-9)

ESTATE CIRCULAR

The next document is an estate circular dated the 10th May, 1909 which is said to have been issued from the sudder office at the Jaidebpur Rajbari, directing the closing of mofussil or Dehi cutcheries on account of the death of the second Kumar, and in which also, significantly enough, the hour of death is mentioned as "midnight of Saturday last" (*Ex Z(154)*, *Vol I*, p 423). The learned judge is apparently not impressed with the genuineness of the circular, of which a lithographed copy has been produced, addressed to the "Mohurir of Dehi Baher Ghata" The defendants have called two witnesses to prove this document, one Basanta Kumar Bal, D W 77, (*Vol 13*, pp 295-308), and the other, Barada Charan Roy Chowdhury, D W 308 (*Vol 15*, pp 418-428). There is no explanation why the original of the circular could not be produced from the sudder office Barada Charan Roy Chowdhury admits that copies of communications sent out from the sudder to Dehis were kept at the sudder office, and expressly states that the original of this particular circular was there (*Vol 15*, p 422, ll 28-30 and ll 38-39) The copy which was put in evidence was not produced even from the Dehi office, but from the custody of Basanta Kumar Bal who had admittedly left the Raj service long ago He was, as he says, the "in-charge Naib" of Baher Ghata at the time (*Vol 13*, p 295, ll 38-39), and it is not at all clear why he should have taken away this document with him, though not addressed to him, when he left that

cutchery According to his evidence this and some other papers which he produced were not important enough to be kept in the cutchery, but "fit to be thrown away", all the same they "got carried" with him in his "hand box" "by mistake" (*ibid*, p 301, ll 3-17) It is still more remarkable that he should have preserved these unimportant papers in his hand-box ever since to be unearthed by the defendants, presumably by some lucky intuition, for, he says that when he found these papers in the box, he did not write to the Bhowal estate to say that they were with him If such a circular had in fact been issued from the Rajbari, copies must have been sent out to other Dehi cutcheries as well, but no such copies have been produced by the defendants One would also expect similar circulars to have been issued on the occasion of the death of Bara Kumar and Chota Kumar, and this is in fact admitted by both the witnesses, but none are forthcoming Basanta Kumar Bal admits that letters received from sudder were entered in a Receipt Register at the cutchery and the entries were serially numbered, (*ibid*, p 304, ll 11-12), but no Receipt Register has been produced, nor is any serial number to be discerned on the circular (*Ex Z(154)*), quite significantly, the edges of the paper are intact, except at the top left-hand corner where the serial number should have appeared (*Vol 15, p 423, ll 6-7*)

In this state of the evidence, it is not at all surprising that the learned judge should refuse to place any reliance upon this circular Mr Chaudhuri laid great stress on the fact that the document bore the initials of Shyama Prasad Roy, the Sudder Naib, who had died long before, and that part of the document, namely, the direction to the Mohurir of Dehi Baher Ghata, was in the handwriting of another person who was also dead, namely, Srinath Biswas who is said to have been the *jamanabis* of the estate (*Vol 13, p 296, ll 4-15 and Vol 15, p 419, ll 12-17*) It was suggested that the handwriting of these dead persons was the strongest proof of the genuineness of the document Speaking for myself, I am not prepared to place much reliance on the evidence of these two witnesses of the defendants regarding the circular, specially in view of the suspicious circumstances in which it came to be produced

CUTTING FROM THE "BENGALÉE" NEWSPAPER

Mr Chaudhuri also refers to a cutting from the "Bengalee" newspaper dated the 11th May, 1909, purporting to contain a report from Darjeeling under date May 9, 1909 "from our own correspondent", in which it is stated that "the second Kumar of Bhowal breathed his last at about midnight yesterday" (*Ex Z(245) Vol I, p 443*) There is nothing to show who sent the report or when it was sent or how it came to be published, neither the "own correspondent" nor anyone connected with the newspaper has been called to prove it An issue of the "Bengalee" of this date was shown to a witness for the plaintiff, Padmini Mohan Neogy, P W 855, sub-editor of this newspaper, who was then on leave and staying at the Lewis Jubilee Sanitarium at Darjeeling, and he said in cross-examination that "own correspondent" may mean anybody, even an outsider (*Vol 8, p 252, l 30*) Only a certified copy of an extract from this paper containing the above report was afterwards put in without being formally proved and without any evidence as to who certified it or what authority he had to do so It is difficult to see how in these circumstances it may be accepted as evidence of the time of death Incidentally, it will be noticed that the report mentions "fever with loss of blood and pain in the abdomen", and not "bilary colic" as the cause of the death

Instead of relying on documentary evidence of such dubious value, the defendants would have really helped their case if they had produced the telegram which had admittedly been sent from Jaidebpur to Bara Kumar, announcing the death of the second Kumar. It will be remembered that Mr Chaudhuri sought to explain its non-production by suggesting that it was in the possession of Sarajubala Devi, the Bara Rani, having been sent to her along with other papers which she had called for from Needham in 1916 (see Vol II, pp 73, 74 and 174), but as I have explained before at some length, I fully accept the learned judge's conclusion that the document was in the custody of the defendants and not of the Bara Rani. It remains to add that by a petition dated the 21st April, 1931, the plaintiff actually called for from Bibhabati Devi and Satyendranath Banerjee, among other documents, all telegrams which they had either sent or received in connection with the second Kumar during the months of April and May, 1909 (Vol I, pp 462-463), but there was no response. On behalf of the defendants, Mr Chaudhuri referred to a petition filed by his clients on the 27th April, 1932, by which they called for the originals of certain telegrams of which they gave a list, from the officer-in-charge, Telegraph Check Office, Calcutta (Vol 2, p 432), but apart from the fact that the Paper-book does not show whether the telegram of death was included in the defendants' list, it must have been known that this was a wholly useless proceeding, as under the rules of the department the originals would not be preserved in the Telegraph Office after such a long lapse of time.

Learned counsel for the defendants made a piquant comment regarding this telegram which, according to him, mentioned "midnight" as the hour of death even if it was forthcoming, said he, there would have been nothing to prevent the trial judge from saying that it was false like the telegrams of illness. Mr Chaudhuri, however, forgets that if the plaintiff's case is true, the telegram must have been despatched before it became necessary for the defendants to invent "midnight", and if a telegram had already been sent before midnight, there could not very well be another later on, stating "midnight" as the hour when the Kumar had died. In case, therefore, the defendants were able to produce a telegram which showed "midnight" as the hour of death, it would obviously not have been open to the learned judge, even if he was minded to do so, to reject it summarily as false. Such a telegram would, on the other hand, have almost conclusively proved the defendants' case by ruling out *ipso facto* the possibility of another message giving an earlier hour of death, but the fact remains, as already stated, that no such telegram was produced by them.

DEATH TELEGRAM—ITS SIGNIFICANCE

A "telegram of death" being admitted on the defendants' side, it was certainly for them to prove when or by whom it had been sent, even if they were unable to produce the original, this being a fact within their special knowledge. The significance of this telegram must have been apparent to them from the beginning, and they could not have been in any doubt as to the case the plaintiff had been making about it. On the plaintiff's part it would have been quite enough to show that the telegram must have been despatched before midnight, as this would have at once wiped out the defendants' case regarding the hour of death. It would naturally, however, be very difficult, if not impossible, for the plaintiff to adduce direct evidence on the point. Direct evidence to the contrary might more easily come from the defendants. But what do we find?

As we have seen, the plaintiff called for the original of the telegram from the other side, but failed to obtain production of it. The court thereupon allowed him to give secondary evidence, as it afterwards allowed the defendants also to give similar evidence of the contents of the telegram, pending a decision of the question as to the party in whose possession the document was (*Vol 18, p 358, ll 11-17*). Plaintiff's witnesses who speak to this telegram are Jitendra Chandra Mukherji, *alias* Billoo, P W 938 (*Vol 10, pp 298-369*), and Sati Nath Banerji, *alias* Sagar, P W 977 (*Vol 11, pp 167-236*), the former being a son of Indumoyee Devi, and the latter a son-in-law of Jyotirmoyee Devi. They both say that on receipt of the 3-10 P M telegram of the 8th May from Darjeeling (*Ex 222, Vol I, p 300*), which for the first time gave the news that the second Kumar was "seriously ill" and passing "frequent watery motions with blood", Bara Kumar and other members of the family at Jaidebpur were very much upset, and it was decided to send up Chota Kumar to Darjeeling, but as there was no train available on that day, it was arranged that he should leave by the earliest train the next morning. Meanwhile, Bara Kumar sent a telegram to Darjeeling, being the 4-45 P M message of the 8th May (*Ex 260, Vol I, p 299*), saying "Wire condition *very often* Wire *immediately* present condition". To this telegram, it may be recalled in passing, there was no reply, and no explanation is forthcoming from the defendants why there was none, if the second Kumar actually survived till midnight. Chota Kumar actually set out for Darjeeling at about 8 A M the next morning. But as he was on his way to the station to catch the train and got very near the station premises, a telegram was handed over to him by a peon announcing that his brother was dead. It is common case between the parties that this was the time and place the telegram of death was delivered, whatever the hour it might have been despatched from Darjeeling. On receipt of the news Chota Kumar burst into tears, and came back home weeping. Billoo's evidence is that he saw the telegram, but remembers only one word in it—"expired". His recollection is that it stated that the second Kumar had died at dusk (*Vol 10, p 326, ll 27-31 and p 327, ll 6-8*). In cross-examination he was asked

"Q—Do you remember that the telegram announcing death mentioned evening as the time of death?"

And he answered

"A—If I remembered that, I could say so at once, but that is the *impression* I have" (*ibid, p 362, ll 1-4*)

Sagar, who came to depose later, says that he was with Chota Kumar at the time, and he read the telegram which was as follows —

"Mejo (or Mejo Kumar) expired this evening" (*Vol 11, p 182, ll 4-6*). All that was put to him in cross-examination regarding the contents of the telegram was this

"Q—I put it to you that the telegram which came said that the *second Kumar died at midnight*"

—not, be it noted, the phraseology which defendants' witness Phani Blusan Banerji, D W 92, afterwards came to give as the "exact" wording of the telegram

"Heart rends to write Kumar expired last midnight" (*Vol 14, p 130, ll 20-22*)

Sagar answered

"A—It said, '*expired this evening*' I saw it with my own eyes." Asked if he noticed the hour of despatch on the telegram, he said he was not

in a condition to do so. No specific hour of despatch, be it also noted, was put to him (*Vol 11, p 225, ll 36-40*)

The learned judge has accepted this evidence, and I see no reason to disagree with him. The only comment which Mr Chaudhuri makes is that none of the plaintiff's previous witnesses had stated that Sagar was to have gone with Chota Kumar to Darjeeling or that he was at the station with Chota Kumar. Sagar says in cross-examination that everyone in the Raj family knew that he was going to Darjeeling (*Vol 11, p 225, ll 31-32*), but Mr Chaudhuri points out that this is not supported by other witnesses of the plaintiff. I do not think that there is any substance in this criticism. P W 15, Keshab Chandra Mukherji, one of the witnesses referred to by Mr Chaudhuri in this connection, merely states that Chota Kumar and he and Digendra Banerjee started for Darjeeling and that on their way to the Jaidebpur station they heard the news of the second Kumar's death: it was then 7 or 8 A M (*Vol 4, p 200, ll 2-4*). An earlier witness, P W 5, Suresh Chandra Mukherji, also says: "The youngest Kumar and Digendra set out to go to Darjeeling, but they heard the news of death and came back" (*Vol 4, p 57, ll 9-10*). Reference is also made to the evidence of Jyotirmoyee Devi, who, however, says no more than this:

"The next day the Chota Kumar set out to Calcutta (*sic*) by the 8 o'clock train. Then a man came running saying, 'Chota Kumar is coming back'. After Chota Kumar returned I heard the second Kumar was dead" (*Vol 8, p 289, ll 3-6*)

Billoo's evidence, again, is referred to, but all that he says is

"There was no time for the Chota Kumar to start that day. Next day, Chota Kumar, Keshab Mukherji and Digen Banerjee set out for the station. They returned from the way to the station—from the station as they got a telegram saying that the second Kumar was dead" (*Vol 10, p 326, ll 24-27*)

It will be seen that all these statements were made by the witnesses in examination-in-chief, and none of them were cross-examined as to whether they purported to give an exhaustive list of the persons who had accompanied Chota Kumar to the station. Nor was there any cross-examination of Sagar himself to suggest that he was not one of Chota Kumar's party who were present at the station or were to have gone with him to Darjeeling, much less was his attention directed to the evidence of the other witnesses, which it is now for the first time suggested tends to exclude Sagar. I have no hesitation, therefore, in rejecting Mr Chaudhuri's criticism of Sagar's evidence as a pure after-thought.

PLAINTIFF'S CASE REGARDING DEATH TELEGRAM

It is significant that the story told by the plaintiff's witnesses as to the circumstances in which the telegram of death was received is confirmed in its broad outline by the defendants themselves: even such a thoroughly unreliable witness of theirs as D W 92, Phani Banerjee, is unable to deny it. It is also a point worthy of special note that though it would have suited the plaintiff better to make out that the telegram had been delivered at the Rajbari in the course of the night, he did not attempt to make such a case, but on the other hand came to court with a story which he knew would to all appearances be more consistent with the defendants' case. The surviving

members of the family who were at Jaidebpur Rajbari on the night of the 8th May have nearly all deposed on the side of the plaintiff, and if the plaintiff was minded to make a false case, nothing would have been easier for him than to get these witnesses to say that the telegram had been received during the night, and the defendants in that case would obviously have found it difficult to contradict such evidence except by the production of the telegram itself. The fact that the plaintiff has not, however, adopted such an easy course only shows to my mind his anxiety not to improve his case at the expense of truth. It is indeed a feature of the plaintiff's case—such a singular contrast in this respect to that of the defendants—that the evidence was allowed to shape the case, and not the case the evidence.

That this is so is fully borne out by the evidence of another witness Niranjan Ray, P W 982, already referred to, who was called by the plaintiff to prove the Darjeeling telegrams, but who when asked about the telegram of death would not say a word more than he could recollect. He was a telegraph signaller at the Jaidebpur Railway Telegraph office in May, 1909, where his hours of duty were from 6 A M to 6 P M, after which the Assistant Station Master would be in charge. "I have no recollection", he says, "but *perhaps* a telegram announcing death of Kumar came that night. I could say definitely if I am shown a copy of that." Speaking from such recollection as he has, he adds that there was a *golmal* at the station that the Kumar was dead, and explains that he would be generally at the station when off duty, as his quarters were quite close (*Vol 11, p 256, ll 9-14*). In cross-examination he states that the *golmal* took place at about 9-30 or 10 P M and that it was a *golmal* among the railway staff (*ibid, p 257, ll 25-26*). The learned judge has accepted this evidence, but as he points out with characteristic fairness, it falls short of establishing that the telegram might not have been despatched from Darjeeling after midnight (*Vol 18, p 359, ll 30-31*).

If, however, the witness's recollection can be trusted, it will undoubtedly show that a telegram containing the news of the second Kumar's death must have been received at the railway station at about 9-30 or 10 P M on the 8th May. It will be seen that the witness was not cross-examined as to why the message could not be sent out for delivery that night. All that he was asked was if he had sent information to the Rajbari.

"Q—Did you send for information at the Rajbari (*sic*)?"

A—No" (*ibid, p 257, ll 25-29*)

Being off duty at the time, he would not of course be expected to send out the message. Billoo and Sagar had, however, already deposed to the telegram having been delivered to Chota Kumar the next morning, when this witness on his own evidence would be on duty, and yet no question was put to him in cross-examination if he had actually arranged for delivery of the telegram. In re-examination, on the other hand, he was asked

"Q—If a message had come, can you (*sic*) and if it was not sent to the Palace, can you explain why?"

And his answer was

"A—Possibly, not to upset the Rajbari" (*ibid, p 258, ll 1-3*)

This has given Mr Chaudhuri a ground for attacking the learned judge as well as the witness. The judge's reason, he says, in accordance with the suggestion made by Niranjan, that the telegram might have been kept back so as not to upset the family, is "impossible" and "ridiculous", and has been

resorted to without the slightest foundation in the evidence in order to explain away the delivery of the telegram in the morning. But whether this be so or not, if Mr Chaudhuri only cared to refer to the Indian Telegraph Guide, which he knows is a quarterly publication issued under the authority of the Director-General of Telegraphs, he would have seen that the belated delivery of the telegram would not after all be such an inexplicable event as he seemed to think. It is perhaps not a violent assumption to make that the news of death would be conveyed in an "ordinary" and not an "Express" telegram, and in that case, under the departmental rules, the telegram would not be delivered in the course of the night. The Indian Telegraph Guide for the quarter commencing April, 1909 sets out the rules thus (*section II, p 19*)

"Rule 59 Express telegrams have precedence over Ordinary telegrams in transmission and are delivered by messengers at any time during the day or night

Rule 60 Ordinary telegrams are transmitted in their turn after Express telegrams, and *delivery is effected by messengers between 6 hours and 21 hours (i.e., between 6 A.M. and 9 P.M.)* These hours are subject to modification to suit local requirements"

In my opinion, the plaintiff has proved as much of his case regarding the telegram of death as it was possible for him to prove, and I hold in entire agreement with the learned judge that without attempting to place his evidence higher than the facts would justify, he has succeeded in showing that the telegram mentioned "evening" as the time of death, as deposed to by Sagar. I may add that I see no improbability in the suggestion that the telegram was received at Jaidebpur at about 9-30 or 10 P.M. in the evening, but was not delivered until the next morning.

This conclusion is only strengthened by reason of the unsatisfactory character of the evidence led by the defendants on the subject, though, as already stated, they were the party from whom definite and consistent evidence should have been forthcoming. This evidence may be now briefly considered.

DEFENDANTS' WANT OF A DEFINITE CASE

Evidently the defendants had no case to make through their witnesses regarding the transmission of the telegram of death from Darjeeling—neither as to the person who sent it nor as to the hour when it was sent. These facts could be proved only by some members of the second Kumar's party who were at Darjeeling at the time. Several of these persons have deposed on behalf of the defendants, such as Bibhabati Devi herself, Satyendra, Dr Ashutosh Das Gupta, Birendra Chandra Banerjee, Anthony Morel and Bepin Khansama, but I think I am not mistaken in saying that none of them have said a word in examination-in-chief regarding the despatch of a telegram announcing the death of the second Kumar. The first of these witnesses to give evidence was Anthony Morel who was examined on commission (*Vol 2, pp 367-431*). He was asked in cross-examination if any telegram had been sent from Darjeeling to Jaidebpur on the night of the 8th May, and he seemed to remember that it had been done (*ibid, p 422, ll 7-9*). The next question put to him was—"At what time?"

But significantly enough, this was objected to. He answered, he did not exactly remember. The question was then repeated in a more specific form

"Q—Was it before or after 12 o'clock (night)?"

This again was objected to

"A—I do not exactly remember at what time. I have not kept in mind, even by guess. It was a matter which happened so long ago."

He was more definite in his reply to the next question

"Q—Was any telegram conveying the news of the Kumar's death sent from Darjeeling?"

A—It was sent

Q—On what date was it sent?

A—I do not remember whether it was on that very night or on the morning of the next day. That telegram was sent to the eldest Kumar

Q—Who sent the telegram?

A—Probably Satya Babu"

It will be seen that up to this stage the defendants were not prepared to say whether the telegram had been despatched during the night of the 8th May or the following morning

EVIDENCE OF BIRENDRA BANERJEE

The next Darjeeling witness was Bibhabati Devi herself (*Vol 12, pp 196-314*), but neither in her examination-in-chief nor in her cross-examination was there any reference to the telegram of death. Bepin Khansama, D W 140, came next (*Vol 14, pp 487-505*) he too had nothing to say about it. Then came Birendra (D W 290) who also was not asked about any such telegram in examination-in-chief, but he found himself in a difficulty in cross-examination, as he was handicapped by a previous statement of his in the Sripur case. Deposing in that case in 1922, he had said quite plainly

"After death, on the night of death, Dr Calvert sent a telegram to Jaidebpur reporting death of second Kumar. Probably it was sent to Bara Kumar and Chota Kumar received the same. No reply was sent to the telegram of Dr Calvert" (*Ex 350, Vol III, p 14, ll 32-35*)

He is a witness who has given himself a certificate that he "never tells falsehoods" (*Vol 15, p 325, l 3*), but one has only to read his present evidence side by side with his previous deposition to see how far this is a correct picture. The way in which he struggles to get out of his former statement regarding Dr Calvert having sent the telegram of death is quite characteristic

"I do not know", he now says, "whether Dr Calvert sent a telegram to Jaidebpur that night. I do not know whether any telegram was sent that night. Dr Calvert was requested to send a telegram in my presence, and because of this request I believe a telegram was sent. This request was made after death. It was made to Dr Calvert in the Doctor's sitting room upstairs. Dr Nibaran, Satya, Ashu Babu and Mukunda Babu were present

"To Court. This was between 12 P M and 1 A M in the night" (*Vol 15, p 347, ll 22-28*)

Confronted with his positive statement in the Sripur case, he tried to explain that he had said this because of the request made to Dr Calvert. He even went the length of suggesting that Calvert had been merely asked to send the news of death, and not a telegram (*ibid*, p 347, ll 29-32), but was constrained to admit that the statement recorded showed that he had himself introduced the word 'telegram' (*ibid*, p 348, ll 10-13). He had no explanation to offer why Calvert should have been asked to send the telegram instead of any of the Kumar's party sending it. He pretended that he did not know till then whether Calvert had actually sent the telegram.

Comment on this evidence is perhaps useless. It may be that Birendra made a lying statement in the Sripur case on purpose. If he mentioned Calvert as the person who had sent the telegram, Calvert being then away in England, there would of course be little chance of his statement being contradicted. On the other hand, if he had given the name of Satyendra, it might have involved the risk of bringing him into the box, or of inviting adverse comment in case he did not come forward. Be that as it may, the only conclusion one can draw is that in so far as the defendants are constrained to make some kind of a definite case regarding the sending of this telegram, it is on their own showing a false case. None of the other witnesses of the defendants support Birendra in this behalf.

OTHER EVIDENCE

Coming next to Dr Ashutosh Das Gupta, D W 365 (*Vol 16, pp 240-246*), there is again the same absence of reference in his evidence to the telegram of death, although he mentions the telegram of illness. Finally, there is Satyendra who has an entry in his own diary under date the 8th May "Message to Uttarpara and J'dpore" (Jaidebpore) (*Ex 399 (1), Vol I, p 306, l 13*). One should have expected him at any rate to throw some light on the question, but not only is he wholly reticent about it in his examination-in-chief, but when confronted in cross-examination with what appears in the diary, all that he is able to say is, "I wrote it—it means telegraphic message", but he cannot say who actually wrote the messages, much less can he say when the messages were sent (*Vol 16, p 500, ll 31-32*). It does seem remarkable that Satyendra's memory, so surprisingly keen and active in regard to other matters in connection with the Darjeeling incidents, should be a perfect blank in regard to this.

Mr Chaudhuri suggested that if the defendants wanted to make a false case as to the person by whom and the time when the telegram was sent from Darjeeling, they might easily have given a name and an hour to fit in with their story. He forgets, however, that some of his witnesses did not hesitate to do so. Birendra, for instance, did name Calvert as the sender, and indicate night as the time when the message was sent. Another of their important witnesses, Phani Bhusan Banerjee, D W 92, who pretended to give the "exact words" of the telegram, was quite positive in stating—and be it noted, this he did in examination-in-chief—that this was a telegram from C J Cabral (*Vol 14, p 130, ll 18-22*). He is supposed to have gone to the station with Chota Kumar on the morning of the 9th May and read the telegram there. In cross-examination his memory seems to have further brightened up, and he remembered not only that the telegram was marked "urgent", but that "the despatching hour in the telegram was morning" (*ibid*, p 149, l 32 and p 150, ll 10-11). Asked if he had read

the hour of despatch in the telegram itself, he was a little less positive in his answer

"A—It may be that, or it may be that as the telegram was coming then, and death had occurred 'yesterday midnight' I presumed the telegram had been despatched in the morning" (*ibid*, p 150, ll 12-51)

Anthony Morel's evidence has been already referred to "probably Satya Babu" sent the telegram, though the witness could not say whether it was sent on the night the Kumar died, or the next morning (*Vol 2, p 422, ll 19-22*) With all this evidence staring them in the face, it seems to me idle for the defendants to pretend that if other witnesses on their side did not commit themselves to any specific case regarding the sending of the telegram, they were held back from doing so by any excess of anxiety on their part to avoid making a false case So far as Satyendra is concerned, I do not believe for a moment that his reticence on the subject was due to mere lapse of memory

SATYENDRA'S DIARY ON THIS TELEGRAM

According to Satyendra's diary, a telegram of death was sent to Uttarpara at the same time as the one to Jaidebpur This telegram could not of course have been suppressed by the Bara Rani, but the fact remains that this has not been produced by the defendants either There is, however, on the record a telegram from Uttarpara sent through the Bally Telegraph Office to Bara Kumar on the 9th May, and admittedly despatched at 14.5 hours (*Ex 226 (a), Vol I, p 305*) It was a message from Ramnaram Mukherjee, mother's brother of Bibhabati Devi, reading as follows

"Sister earnest requests that Biva should come here directly Kindly agree and arrange accordingly "

Mr Chaudhuri suggested that this was a reply to the telegram of death, and argued from it that the latter must, therefore, have been sent in the early morning of the 9th May, which, according to him, would exclude death in the evening and establish death at midnight Apart from the fact that there is no foundation in the evidence for Mr Chaudhuri's suggestion, such an assumption seems to be excluded by the wording of Ramnaram's telegram itself, which in fact appears to pre-suppose an earlier message of condolence as a reply to the telegram of death In any case, though a telegram in the evening would exclude death at midnight, it is not at all clear how a telegram sent early next morning would necessarily exclude death at dusk

CASE MADE BY COUNSEL

Without committing himself to a specific hour, Mr Chaudhuri made the definite case before us that the telegram of death must have been sent from Darjeeling in the early morning of the 9th May It is necessary, therefore, to consider how far this is supported by the defendants' evidence or is consistent with probabilities As we have seen, according to the plaintiff's case, the telegram was a Railway message, transmitted from the Darjeeling Railway Telegraph Office to the Railway Telegraph Office at Jaidebpur (*see the evidence of Nnanjan Ray, Vol 11, p 256*), but Mr Chaudhuri maintained that it was a Government Telegraph message, this being in accordance with the evidence of his witness Phani Bhusan Banerjee, DW 92, who stated that the telegram arrived from the Post

Office and was delivered through a postal peon (*Vol 14, p 150, l 27 and p 130, ll 17-18*) Admittedly, the telegram was delivered to Chota Kumar near the Jaidebpur Railway Station on the morning of the 9th May as he was on his way to catch the train, and if defendants' witness David Manuk is to be believed, this was within half an hour of the starting of the train (*Vol 3, p 328, ll 12-13*) With the consent of the parties we obtained from the Eastern Bengal Railway authorities a copy of the Time Table for May, 1909, as we also got from the Telegraph authorities a copy of the Indian Telegraph Guide of the time, which has been already referred to The Time Table shows that the morning train was due to leave Jaidebpur at 8-32 hours It is reasonable, therefore, to suppose that the telegram was delivered to Chota Kumar at about 8 A.M. in the morning

Clearly, on the defendants' case, the telegram could not have been sent as an "Ordinary" message The 9th May was a Sunday, and under Rule 61-A of the Indian Telegraph Guide, an Ordinary telegram would not be accepted on Sunday, the rule running as follows —

"Ordinary telegrams are not accepted on Sundays and the four principal holidays, Christmas Day, New Year's Day, Good Friday and the King's Birthday"

Secondly, under Rule 2, such a telegram would not be accepted except during working hours Rule 2 lays down—

"Subject to the provisions of Rules 2-A, 61-A and 128-A, telegrams are accepted at all Government Telegraph Offices during the hours noted against them in the List of Offices published in Section VI",

and according to the Telegraph Guide, the working hours of the Darjeeling Government Telegraph Office in May, 1909, were from 7 to 21 hours on ordinary days, and from 8 to 10 and 16 to 18 hours on Sundays and holidays

The question, therefore, arises as to whether the telegram could have come through "Express", as is in fact the evidence of D.W. 92, Phani Bhusan Banerjee, already quoted Rule 2-A, which, as noted above, is an exception to Rule 2, lays down that an Express telegram will be accepted during the hours when an office is closed, if the terminal office is open or its attention can be gained, on the payment of extra fees The Telegraph Guide shows that the Government Telegraph Office at Jaidebpur, which was a combined Post and Telegraph Office, was open only from 7 to 9 and 12 to 17 hours on ordinary days, and from 8 to 9 and 16 to 17 hours on Sundays and holidays, though the Railway Telegraph Office was open at all hours during all days of the week, including Sundays and holidays If it be a fact that the telegram was delivered at 8 A.M., it must have been presented at Darjeeling before that hour, but the rules make it clear that even an Express telegram for Jaidebpur would not be accepted at Darjeeling on Sunday before 8 A.M., unless it was possible to "gain" the attention of the Jaidebpur office There is, however, no evidence on the point forthcoming from the defendants, and I do not think this is a matter in which the court will be justified in drawing a presumption in their favour under s 114 of the Indian Evidence Act Taking all the facts and circumstances into consideration, it seems to me that the probabilities are clearly against the case made by learned counsel on their behalf

It remains to point out for what it is worth that the entry in Satyendra's diary relating to this telegram is under date the 8th May, and not the 9th If this is a correct record,—and Satyendra himself does not suggest it is otherwise,—the telegram could not have been despatched on the morning of the 9th, as Mr Chaudhuri would now have it On the other hand, if

the order in which the entries of the 8th May are made is any indication of the sequence of events recorded therein, the telegram must have been despatched after the doctors "melted away" and Satyendra sent for his *Sejomama* Suryyanarain, and before he sent a messenger to the Sanitarium to get men to remove the corpse for funeral, and on the defendants' evidence already referred to, this must have been before 1 A M

One of Mr Chaudhuri's contentions was that if the telegram of death had mentioned "evening" as the hour of death, it would have excited Bara Kumar's suspicion as being inconsistent with the hour "11-45 P M" mentioned in Calvert's certificate of death, and he refers in this connection to the evidence of Jyotirmoyee Devi who says that about a month and a half after the second Kumar's *sradh*, Bara Kumar received an anonymous letter, in consequence of which he was about to go out in search of the second Kumar, but was dissuaded from doing so by Satyendra showing him Calvert's certificate (*Vol 8, p 289, ll 20-26 and p 322, ll 9-11*) The short answer is that there is nothing in the evidence to show that the exact time of death was a point of any importance at this stage, and the mention of "evening" in the telegram was no more likely to have given rise to any suspicion of inconsistency with the certificate than the statement in the certificate itself that "the attack became acute on the morning of the 8th and he (Kumar) died the same *evening*" (*Ex Z (III), Vol I, p 178, ll 25-26*) Bara Kumar, again, it may be added, might not have noticed the hour of despatch on the telegram when it was received, or remembered it at the time he was shown Calvert's certificate of death

Another point on which Mr Chaudhuri laid some stress was that at quite an early stage in the case, long before the trial commenced, one of the defendants' witnesses examined on commission, David Manuk, speaking about the contents of the telegram, definitely mentioned "about midnight" as the hour of death (*Vol 3, p 307, ll 36-37*), but that there was no cross-examination of the witness that it was not "midnight" but "evening" It was suggested that "evening" was an after-thought on the part of the plaintiff It will be seen, however, that Manuk was pointedly asked in cross-examination about the hour of despatch of the telegram, and he answered, "I cannot say" (*ibid, p 326, ll 16-18*) Earlier, Anthony Morel, another of defendants' commission witnesses, was specifically questioned if the telegram had been sent from Darjeeling *before midnight* (*Vol 2, p 422, l 12*) With all respect to learned counsel, I feel bound to say, therefore, that the point raised by him does not appear to me to be of any significance whatever

TRIAL JUDGE'S FINDING AFFIRMED

To my mind, on the materials on the record, there seems to be no escape from the conclusion reached by the learned trial judge regarding the telegram of death (*Vol 18, p 359, ll 29-36*)

In my opinion, I may repeat, there is clearly no foundation for suggesting—none, at any rate, for such a suggestion in the sense in which Mr Chaudhuri made it,—that on the question of the hour of death or supposed death, the learned judge rests his conclusion not on any direct evidence, but on certain circumstances, "not one of them, but all taken together" (*Vol 18, p 355, ll 20 et seq*) The direct evidence of the defendants on the point, as already indicated, consists primarily of the statements of persons who were said to have been present at "Step Aside" at the time As regards

others, like Rajendra Nath Sett and Tinkari Mukherjee from the Lewis Jubilee Sanitarium, or Shyamadas Banerjee and Durga Charan Pal from the Old Cutchery Building, their evidence as to the hour of death is virtually hearsay, and has no independent value of its own. All that they say is that they received a summons from "Step Aside" at about 1 or 1-30 A.M. that night to come over there for the cremation. Even if this evidence be accepted as true, it can establish no more than that death had taken place at some time before that hour. Rajendra Nath Sett does not even purport to say that on going to "Step Aside" he heard that the Kumar had died at about midnight. He speaks to the contents of a "slip" which he received from Satyendra, but this does not give the time of death, and merely states, "Dear Mr Sett, Kumar is no more, please come with Brahmms for the last rites" (*Vol 1, p 301, ll 6-8*). It is needless to say the slip has not been produced. Tinkari Mukherjee also says no more than that a man came to call them for the funeral after the second Kumar's death (*Vol 1, p 434, l 5 and p 451, ll 20-26*). Shyamadas Banerjee, who too is said to have been informed of the Kumar's death by a slip from Satyendra, no doubt says that on his way to "Step Aside" the peon who had brought the slip told him that the Kumar had died half an hour or an hour before (*Vol 1, p 256, ll 11-12 and ll 16-22, and p 269, ll 8-10*), but neither has the slip been produced, nor the peon examined. Durga Charan Pal in his turn merely speaks to having received the news of death after midnight and says nothing as to when the event had occurred (*Vol 13, p 146, ll 25-26*).

EVIDENCE OF P W RAM SING SUBHA

I may now pass on to consider the direct evidence regarding the hour of death on behalf of the plaintiff which, as already stated, comes from Ram Sing Subha, P W 967, as well as from two other witnesses, Chandra Singh, P W 968, and Mahammad Ashraf Alam, P W 980, to whom, however, the learned judge has not referred in this connection. As the plaintiff relies strongly on the evidence of Ram Sing Subha, not only on this question but also in connection with other points, it may be useful to deal with it at some length here.

Ram Sing Subha was an agent of Mr Wernicke, the landlord of "Step Aside", through whom, it is admitted, Satyendra and Mukunda Gurn had engaged the house for the second Kumar. He then lived in the outhouses of Mall Villa No 3, which was quite close to "Step Aside" and on the same road (Rangit Road), going down north towards Lebong, the distance being about 150 feet by a steep route, and 400 to 500 feet by the main road, if one took a round-about way. During the Kumar's stay at "Step Aside" he would be visiting him almost daily. After about 10 or 12 days, however, he did not meet him any further and was informed by "Sala Babu" (brother-in-law), that being the name by which Satyendra was familiarly known in the house, that the Kumar was ill of dysentery. Two or three days later, on a Saturday afternoon, he remembers he returned from the Lebong races at about 4-30 P.M. and took his meal. About two hours later he heard cries of lamentation, which appeared to him to be women's cries, proceeding from "Step Aside", and he went over to see what it was about. It was then 7 or 7-30 P.M. He found the servants downstairs talking, and gathered that the Kumar had died. He went upstairs by the sloping hill-path and saw the Kumar's body lying on a mattress spread on the floor in a small room, being room No 1 at the southernmost end of the house, covered from head to foot with a white cloth. He noticed several persons

sitting there quietly, among whom he mentions Dr B B Sarkar, and left after a few minutes, without having exchanged any word with them. He came downstairs by the wooden staircase, and on his way, as he passed along the glazed verandah from south to north, he could see through the doors the second Rani lying on an iron cot in room No 3, crying aloud "The room in which the Rani was", he says, "I found locked up from outside. I saw the lock". He retired for the night feeling very sad and was waked up from sleep by a Nepali servant who reported that there was some *golmal*. He did not, however, leave his bed. Early next morning he went over to "Step Aside" again, when he was asked by "Sala Babu" to procure a *charpoy* and assist in sending funeral requisites to the "*sasan*", which he did from the bazar. Returning to "Step Aside" at about 8-30 A M, he noticed a dead body placed on the charpoy in the outer compound of the house, fully covered up with a shawl. He joined the funeral procession, went to the new cremation ground, and saw the dead body laid on the pyre, covered up as before, and burnt. At the time the body was lifted from the *charpoy* to the pyre, the cloth slipped off a little, and he could catch a glimpse of two or three small marks on the left side of the body near the ribs. He adds that nobody could see the face of the dead body during cremation.

DEFENDANTS' CRITICISMS

There can be no question that if one believes this witness, as the learned judge has done, it fully establishes the plaintiff's case regarding death at dusk and a morning cremation with a body of which the face was not exposed. Speaking for myself, I see no inherent marks of falsehood in this evidence, but as was to be expected, it has come in for severe castigation at the hands of Mr Chaudhuri, and it is necessary, therefore, to consider his grounds of attack.

PLAINTIFF'S TADBIRKAR

The first and foremost reason why it is said this witness should be discredited is that he was trying to secure false evidence of a substituted dead body in the Defamation Case at the instance of the plaintiff and his party. He had deposed in this case himself, and had come to Dacca for the purpose on March 21, 1923, and also made an affidavit there about four months or so earlier. Questioned if he afterwards made any *tadbir* or any efforts to bring witnesses in that case, he denied having done so, or having obtained or sent any statements of any witnesses (*Vol 11, p 70, ll 20-37*). He was, however, confronted with certain letters of his two of these, *Exs Z(52) and Z(53)*, (*Vol III, p 41 and p 42*) dated March 28 and March 29, 1923, respectively, addressed to one Adong Babu, showed that on his way back to Darjeeling from Dacca, he stopped at Kurseong and tried to see him at Dow Hill, but as he did not meet him there, he was writing to let him know the date of the Defamation Case and to ask that he should attend at Dacca on or before the 7th April, 1923, where his expenses would be paid. The witness himself, it was mentioned, would be at Dacca with Latik Bhotiyani of Dow Hill and Jom Nurse. Another letter to one Jeebay (wrongly printed as Jechay Baboo) dated April 16, 1923, (*Ex Z(55)*, *ibid, p 44*) showed that he had got a statement from this person some time ago. Latik Bhotiyani, it is said, was the aunt of the "stout and fair complexioned" Lepcha, named Pengumche, referred to in the question which was put to Lindsay in cross-examination, suggesting that this was the man whose dead body was found covered up at "Step Aside" on the morning of May 9 (*Vol 2, p 178, ll 29-32*).

I am not at all sure that any of the facts elicited from the witness in cross-examination tend to show that his evidence must necessarily be false. It is true that he first denied having made any *tadbi* in the Defamation Case, but this may have been due to mere lapse of memory, for, as soon as his letters were shown to him, he promptly admitted that they were his and that what he had said therein must have been correct. There is nothing in these letters to lend support to Mr Chandhuri's suggestion of any improper attempt on his part to procure the evidence of Latik Bhotiyani, much less to show that he made such attempt at the instance of the plaintiff or anyone connected with his party. All that appears is that he was proposing to go to Dacca with Latik Bhotiyani. His positive statement is that he did not actually bring this witness to Dacca. He heard that she had deposed in the case, but did not know (*Vol 11, p 72, l 9 and l 13*). He also states that what he did in the Defamation Case, he did for Purna Chandra Ghose, the accused therein (*ibid, p 71, l 13*). He admits that when he came to Dacca to swear the affidavit, he saw Rani Satyabhama, but he did not see her when he came to depose which, according to his evidence as already stated, was on March 21, 1923, about four months or so later. This would be quite consistent with the fact as we know it that Rani Satyabhama died on December 15, 1922.

Ram Sing Subha further said in his evidence that he had been approached by the defendants in connection with the present case about three months before he came to depose, and produced a letter purporting to be from Bibhabati Devi, which is said to have been handed over to him by a Darjeeling pleader of the name of S N Gupta (*Vol 11, p 69, l 28—p 70, l 4*). As, however, on the letter (*Ex 205, Vol III, p 318*) being put to Bibhabati, she denied the writing and signature, (*Vol 12, p 217, ll 15-19*), it cannot be said to have been proved, and no notice can, therefore, be taken of it. In cross-examination the witness denied the statements imputed to him in the letter (*Vol 11, p 81, ll 23-29*).

WRONG DESCRIPTION OF SASAN

It is next urged by Mr Chaudhuri against this witness that he gave a false description of the cremation ground, showing that he could never have attended the funeral as stated by him. The false description is supposed to consist (i) in his denial of the existence of a *pucca* pyre on the new *sasan* at the time (*Vol 11, p 67, ll 5-6*), (ii) in his mention of the slaughter-house to the left of the old Sudhir Kumari Road, as one descended along this path towards the new *sasan* (*ibid, p 67, ll 14-15*), and (iii) in his statement that in 1909 Morganstein had only his vegetable garden near the cremation ground, and not his house "Rosary" (*ibid, p 69, ll 23-25*).

As for the *pucca* pyre, it appears from the cross-examination itself that in the Defamation Case Ram Sing Subha had stated that "the place where dead bodies are generally burnt looks like a *pucca* place. The place where the dead body was burnt was five or six cubits off this *pucca* place" (*ibid, p 78, ll 32-34*), and there would be no point whatever in his denying it now, if his recollection was not faulty. Mr Chaudhuri has only to make a study in contrast by referring to what his own important witness R N Banerjee said, and said with an air of positive assurance which Ram Sing Subha could not approach, about there having been a shed in the new

cremation ground in 1905 or 1906—exactly the same as he saw it in 1909 when he took the dead body of the second Kumar there

“Q—Do you remember if there was or was not any shed in the cremation ground?

A—There was a shed there which I saw in 1905 or 1906 and which I observed when I went to cremate the remains of Rai Bahadur Das, a medical practitioner (According to D W 411, Vol 17, p 315, ll 24-25, Rai Bahadur Das died about 1905 or 1906)

Q—Was that shed in existence in the year 1909 when you went to cremate the dead body of the second Kumar?

A—It was exactly the same as when I first saw it in 1905 or 1906

Q—Is the present cremation ground the same as where the body of the second Kumar was taken for cremation?

A—The grounds are the same, the place is the same, but it has been improved beyond recognition” (Vol 3, p 108, ll 11-22)

Secondly, as for the slaughter-house mentioned by Ram Sing Subha, it is not at all clear that he was not identifying the “small foot-path” from the old to the new cremation ground not only by its name Sudhur Kumari Road, but also by reference to the present slaughter-house which would undoubtedly be on the left side, going downhill. The witness, it may be added, was not at all cross-examined regarding the slaughter-house. Lastly, as for the “Rosary”, he states in cross-examination that he does not remember if he saw the “Rosary” in 1909 (Vol 11, p 81, l 10). The evidence of Morganstein’s son, D W 398, (Vol 17, p 127, ll 17-20) shows that the house which was completed in 1907 was first known as “Emil’s Cot”, and then called “Rosary” since the Great War.

In any case, even if the witness was wrong in his description of the *sasan* in certain particulars, these were much too trivial mistakes, and one should not be justified in making too much of them.

DENIAL OF ADMITTED INCIDENTS

Mr Chandhuri’s next point of attack is that Ram Sing Subha denies two important incidents which are said to have taken place at the cremation ground, namely, the uncontrollable demonstrations of grief on the part of Birendra Chandra Banerjee and Sarif Khan, the former rolling on the ground and the latter trying to throw himself on the funeral pyre—incidents which, it is pointed out, the learned judge himself says have been admitted on behalf of the plaintiff (Vol 18, p 379, ll 21-24). This is what the witness says

“I did not see anybody trying to fling himself on the pyre. I did not see anybody catch hold of anybody trying to do so. If such a thing had taken place, I would have seen it. I do not remember anybody starting to cry there. I saw nobody rolling on the ground.

Q—It is wholly false?

A—Yes” (Vol 11, p 78, ll 19-25)

It is true that Basanta Kumar Mukherjee, P W 823, refers to these incidents in his evidence (Vol 9, p 385, ll 12-22), as he also did in his former

statement to Mr N K Roy (*Vol II, p 234, ll 14-17*) I am not, however, prepared to hold, merely because Ram Sing Subha did not notice these happenings or remember having noticed them, he must be giving false evidence. Be it noted that the suggestion was not put to the witness by the defence that he had not gone to the cremation ground. Many of defendants' witnesses also do not mention any of these incidents, such, for instance, as R. N. Banerjee referred to above.

"MEDDLESOME" AND "OFFICIOUS" CONDUCT

Mr Chaudhuri next comments on the conduct of Ram Sing Subha after he came to "Step Aside" on the evening of the 8th May, which, taking his cue probably from a remark which fell from one of the members of the Bench, he suggested was that of a "meddlesome", "impudent" and "officious" person. This man, said Mr Chaudhuri, goes upstairs, wanders through the rooms, speaks to nobody, he peeps into a room and sees a dead body lying there and leaves the house, and then goes to sleep because he is feeling sad. All I can say is that in the first place, this is a caricature of the witness's evidence, and secondly, that it betrays a lack of understanding of things as they would happen in this country which might perhaps be excusable in my learned colleague, but not certainly on the part of Mr Chaudhuri. In fairness to my learned brother, I must say, however, that he himself suggested to Mr Chaudhuri later on that what had struck him before as an "outrageous proceeding" on the part of Ram Sing Subha was not really so. After all, what is he supposed to have done? Here is a man who has been going to the Kumar every day, a few days later, he hears about his illness. All on a sudden one evening he hears cries of lamentation from the house. He forthwith proceeds there and is told the Kumar is dead. He quietly walks upstairs, and sees a number of persons sitting there in silence. None of them speak to him and he does not speak to any one either. After a while, he leaves the place, and as he passes along the verandah, his attention is naturally attracted by the Rani's weeping inside a room. The doors of the room are shut, but through the glass panes he sees the Rani lying on a cot. There is no question of any impertinent peeping into the room. He returns home, and retires to bed, feeling depressed. Where is anything "preposterous" in this? There is no attempt on his part to disturb anybody. He neither wanders all over the place, nor exhibits any prurient curiosity. Nor, it is true, does he officiously offer his services. The reason why he does not leave his bed and go over to "Step Aside" again during the night when he hears about the *golmal*, may be that he is not told that he is wanted there at that hour. He may well have thought and according to Mr Chaudhuri he would be quite justified in so thinking, that the cremation could not be taking place before dawn. To my mind, I have no hesitation in saying, the conduct of Ram Sing Subha seems to be perfectly reasonable and natural, and his evidence bears on the face of it the impress of truth.

RANI "LOCKED UP"

Mr Chaudhuri made a good deal of Ram Singh Subha's statement that he found the room in which the Rani was, "locked up from outside". What he obviously meant was that the door was shut, as he explains in cross-examination.

"In the room marked "A" the Ram lay locked up as I said The door-lock was locked There was no padlock I did not see if the key had been turned, but the door was shut" (Vol 11, p 76, ll 25-27)

Mr Chaudhuri finds fault with the learned judge for suggesting that the defendants gave evidence to show that the dead body lay in room No 2, only to discredit Ram Sing Subha, who says that he saw the body in room No 1 (Vol 18, p 363, ll 5-9), and he points out that R N Banerjee had stated long before the hearing commenced that the body was in room No 2

"Then we entered a small room There were two or three persons there whom I have no recollection of We went through that room into the larger room where the dead body was" (Vol 3, p 121, ll 4-6)

The small room is Room No 7 and the larger room is Room No 2

Mr Chaudhuri conveniently forgets that this was not a new case which Ram Sing Subha was making after the evidence of defence witness R N Banerjee, but that this was also his statement in the Defamation Case made more than ten years earlier, an extract from which is reproduced in paragraph 28 of the plaintiff's memorial, Ex J

"At 7-30 P M I heard cries in the "Step Aside", I went there and found that *in a small room* the dead body of the Kumar was lying upon a mattress over the floor, covered with a white cloth" (Vol III, p 99, ll 16-19)

It will be seen in fact that there is no material discrepancy whatever between Ram Sing Subha's present evidence and his deposition in the Defamation Case Mr Chaudhuri at any rate was unable to point to any.

Contrary to the plaintiff's case, the defendants would say that room No 1 upstairs was used as the "Doctors' sitting room" (See, for instance, Bibhabati, Vol 12, p 249, ll 10-15) But in the commission stage their witnesses had certainly suggested a room on the ground floor for the purpose (*Shyamadas Banerjee*, Vol 1, p 269, ll 38-40 and *Jagat Mohun*, p 281, ll 35-37, p 293, ll 24-25) Satyendra himself admitted this at first, though only to pull himself up at once after this momentary lapse into truth

"My uncle when he came in with Dr Sarkar saw Col Calvert and Sen in the house

"Q—Where did he see them?

A—In the sitting room downstairs as he passed I think I made a mistake The ordinary sitting room downstairs, but that night my uncle saw the doctors in the sitting room upstairs" (Vol 16, p 486, ll 34-39)

IRRESPONSIBLE NATURE OF CRITICISM

To illustrate the irresponsible nature of Mr Chaudhuri's criticism, I might perhaps also refer to a point which he made with reference to the witness's statement as to having seen Naga sannyasis at Darjeeling (Vol 11, p 68, ll 3-13) He suggested that having about this time got hold of Darsan Das *alias* Gopal Das, the rescuing sannyasi, P.W. 991, who was afterwards put into the box on January 9, 1935 (Vol 11, p 378), the plaintiff was now far the first time giving an indication of the presence of Naga sannyasis in Darjeeling through this witness Ram Sing Subha.

Mr Chaudhuri had only to refer to the evidence of Kamal Kamini, one of the earliest commission witnesses of the plaintiffs, who deposing on December 31, 1930, had said

"The plaintiff told me that a certain sannyasi took him away from Darjeeling I did not ask him who the said sannyasi was The plaintiff told me that the said sannyasi was a Naga (nude sannyasi)" (Vol 1, p 223, ll 22-25)

This would have shown how incorrect it was to assert that Ram Sing Subha was a screen on which coming events were made to cast their shadows

It is significant that Ram Sing Subha's evidence receives confirmation in several particulars from the side of the defendants themselves First, as to the presence of Dr B B Sarkar in the second Kumar's bed room at 7 or 7-30 P M on the evening of the 8th May As the learned judge points out, this witness was the first to introduce Dr Sarkar there (Vol 18, p 339, ll 23-24), none of the defendants' witnesses, neither Jagat Mohini (Vol 1, p 281) nor Shyamadas Banerjee (Vol 1, p 255), having named him in their evidence Calvert, specifically asked in Interrogatory No 15 if he remembered any other physician besides Nibaran Chandra Sen attending the Kumar during his last illness, did not mention his name all that he said was

"I remember the Kumar had his own private medical attendant who was present during his illness I cannot remember his name" (Vol 2, p 205, ll 6-8)

Dr Sarkar was known to Calvert at the time, as is shown by an entry in Dr Sarkar's diary (*Ex Z* (215), Vol 1, p 247) under date March, 7 "Saw with Dr. Calvert and Town Nurse Called on Dr Nibaran 'Chandra Sen' (Entry not printed) Even during Ram Sing Subha's evidence, as the trend of cross-examination suggests, the defendants were seeking to challenge the presence of Dr Sarkar The fact, however, had to be admitted by them at a later stage—by Bibhabati Devi herself, though without naming him (Vol 12, p 203, ll 32-33, p 248, ll 19-23, p 256, l 37 and pp 257-259), and by Satyendra-nath Banerjee (Vol 16, p 428, ll 1-3, p 475, ll 33-34, p 477, ll 4-19, pp 485-487 and p 494, l 3) Satyendra's diary also, as already seen, mentions Dr Sarkar as one of the doctors present at the time of the Kumar's death, though he tries to deny the fact in his present evidence (Vol 16, p 429, ll 2-4 and p 477) The defence, it may be pointed out, not only now admits Dr Sarkar's visit on the 8th evening, but relies on the entry in his diary under this date, "Kumar of Bhowal some hours" (Vol 1, p 248)

It further appears that Mr Chaudhuri now accepts Ram Sing Subha's statement that he was asked to purchase the *charpoy* for carrying the dead body (Vol 11, p 66, ll 35-36), though Satyendra was made to deny this in his examination-in-chief in course of which he stated

"It is not true that Ram Sing Subha purchased the *khat*, *ghee*, etc for cremation" (Vol 16, p 429, ll 35-36)

It was probably forgotten at the time that R N Banerjee had already committed himself on the point

"Going downstairs I along with others was arranging to bring a *charpoy* or *khatia* from inside the house Mr Wernicke's Munshi Ram Sing was responsible for the procuring of the said *charpoy*" (Vol 3, p 121, ll 30-32)

Then, again, though it is a small point, Ram Singh Subha's reference to the "women's cries" from "Step Aside" which he heard, finds indirect

support from the admission of Jagat Mohini that there were a number of females including "a few widows" in the house at the time the Kumar is said to have died, though, of course, she would advance the time of his death (*Vol 1, p 295, ll 6 and 11-15*)

Ram Sing Subha, again, was the first witness to give the story that the Kumar's body lay upon a mattress on the floor on the evening of the 8th May, that having been also his statement in the Defamation Case (*Vol II, p 66, ll 12-13 and Vol III, p 99, ll 17-19*), and this story afterwards came to be confirmed by the defendants' witnesses (*Bibhabati, Vol 12, p 254, ll 24-25*) It is nobody's case that Ram Sing Subha went upstairs on the morning of the 9th May

In my opinion, Mr Chaudhuri has wholly failed to show that the learned judge was at all wrong in accepting the evidence of this witness. In fact it will be hardly incorrect to state that almost on all points on which the defendants sought to contradict the witness, the facts have been either proved or admitted to be true

"DEATH" BETWEEN 7 AND 8 P M

So far as the question of the hour of death is concerned, that evidence receives overwhelming corroboration from all the surrounding circumstances which, taken together, as the learned judge points out, indisputably establish the fact of death or apparent death at dusk, somewhere between 7 and 8 P M on the 8th May (*Vol 18, p 355, ll 19, et seq*) It is not necessary for me to recapitulate all these circumstances, which have been set out very carefully in the judgment of the court below, and some of which I have already considered at some length. It is enough for me to state that Mr Chaudhuri has been unable to advance any arguments which tend to weaken the force or cogency of the learned judge's reasoning or conclusion on any of these points. There are, however, one or two of these facts mentioned by the learned judge to which I might perhaps refer a little fully

COLLAPSE ABOUT MID-DAY ON DEFENDANTS' OWN EVIDENCE

First, as to the course of the illness, pointing to death as near, and particularly the collapse which he finds occurred at mid-day. It is not denied that the second Kumar did fall into a state of collapse, and it is also admitted by the defendants that at about 11-30 A M or 12 noon, he suddenly showed certain alarming symptoms which made it necessary to send for Calvert at once, but before Calvert arrived, Dr Nibaran Chandra Sen was already there. According to Satyendra, as well as Bibhabati Devi, Dr Nibaran Sen came at about 12 noon and Calvert at about 2 P M, and it was between 4 and 6 P M that the hypodermic injection could be given to the Kumar after a great deal of persuasion. On Satyendra's evidence, Calvert had paid an earlier visit that morning between 9 and 11 A M. His cousin Shyamadas Banerjee, however, gives a different version. Shyamadas says that early that morning he received information that the second Kumar had passed a restless night, and so he called at "Step Aside" on his way to office to see the Kumar. He was there for about two hours and was told by Satyendra that the Kumar was in a serious condition. Calvert and Dr Nibaran Sen both came while he was there, and left after making arrangements for treatment and nursing (*Vol 1, p 267, ll 21-36*). According to this evidence, the serious turn in the illness must have commenced long before the time suggested by Satyendra or Bibhabati Devi, and the 2 o'clock visit of Calvert

spoken to by them cannot, therefore, but be an obvious concoction. Whether Calvert or Dr Nibaran Sen had paid an earlier visit in the morning or not, all the indications seem to point to Shyamadas' evidence being nearer the truth when he says that both these doctors were attending between 10 and 11-30 or 11-45 A M when he was there and when the Kumar's condition was already very serious. Calvert's condolence letter certainly points that way, for it says quite clearly that when "later in the day" the Kumar had a relapse of the colic "in a most intense form", the Private Secretary was able to secure Calvert's "*early attention*" to the case, which seems to me to rule out such a long interval as 2½ hours between the onset of the serious symptoms and the visit of Calvert, as suggested by Satyendra or Bibhabati Devi. It is also clear that the second and third prescriptions of the 8th May, *Ex 51 (b)* of Dr Nibaran Sen and *Ex 51 (c)* of Calvert, must have been made on this early mid-day visit of the doctors, and Calvert himself admitted, with reference to the latter prescription, that this was a stimulant mixture given when the collapse commenced (*Vol 2, p 214, ll 16-17*). As regards the "armoury prescription" in *Ex 51 (b)*, it hardly admits of doubt, that the tabloids mentioned in it were all a provision against collapse, as put by Mr Chaudhuri himself to Col MacGilchrist (*Vol 9, p 360, ll 8-9*). Calvert suggested no doubt that the stimulant "Spt Ether mixture" and the "opium pills" in *Ex 51 (c)* were given as "substitutes for the real treatment" (*Vol 2, p 215, ll 34-35*), but that would imply, as the learned judge points out (*Vol 18, p 347, ll 31-37*), that there was no treatment up to at least 2 P M for the symptoms which on the defendants' own showing had appeared 2½ hours earlier.

Reference may be made in this connection to Dr Ashutosh Das Gupta's statements in the Sripur case and the Defamation Case, to which his attention was called in the course of his present deposition, and which he admitted to be true.

Q—'After 2 P M the pulse began to be bad'—you said that in Sripur case? (*Ex 394 (11), Vol III, p 20, l 13*)

A—Yes, as it is there.

When I said it I believed it to be true. I do not say my recollection is better now.

Q—Before Sarada Babu, Magistrate, you said

'Collapse commenced from about 4 or 5 P M. There was sinking of the pulse. Pulse could not be felt' (*Ex 395 (4), Vol II, p 364, ll 35-36*)?

A—Yes. I said then what I believed then to be true and in my recollection I do not remember whether the prescription 'No 1 of *Ex 51 (c)*—the Spt Ether prescription—was given when the collapse began. Nor whether it was given at the end of the collapse. It is likely it was given when the Kumar was going towards collapse.

All my statements in my depositions in the Sripur case and before the two Magistrates who heard the Defamation Case, were then truly made and within my then recollection—what recollection I had then" (*Vol 16, p 303, l 30—p 304, l 22*).

CONDITION BEFORE EVENING

Jagat Mohini Dasī, the attending nurse, in her evidence also gives sufficient indications of a state of collapse early in the day. The defendants admit that she was called in on the day of the Kumar's death, and her

statement is that she came at 5 or 5-30 P M, when both Col Calvert and Dr Nibaran Sen were there (*Vol 1, p 292, ll 38-40*) On her arrival, according to the instructions of the European doctor, she started rubbing the body of the Kumar with a white powder The Kumar closed his eyes after looking at her face, and did not speak a word The body was rather cold The powder was rubbed for 10 or 15 minutes when this was stopped by Dr Nibaran Sen The patient was involuntarily wetting his clothes (*ibid, p 281, ll 27-30, p 293, ll 5-8, ll 13-19 and ll 21-23*) Calvert remained there for about an hour after she had arrived (*ibid, p 281, ll 35-36 and p 293, l 24*), which means that he left at about 6 or 6-30 P M, as is the plaintiff's case According to Jagat Mohini, Calvert came again at 10 or 11 P M on receipt of a peremptory call in view of the Kumar's condition taking a sudden turn for the worse Whether this part of her evidence is true or not, and in my opinion it is not, there could be no doubt that when she came in the afternoon she must have found the patient already in a very bad condition

On the defendants' own evidence it seems to be fairly clear that *Ex 51 (c)* must have been given about the time the collapse commenced, an injection was given afterwards which had no effect, and then Jagat Mohini came and rubbed the white powder, which had to be stopped because it did no good either, as Bibhabati herself admits (*Vol 12, p 248, ll 17-18*) According to Mr Chaudhuri the injection was given at 4 P M Bibhabati would put it between 4 and 6 P M (*Vol 12, p 248, ll 7-14 and p 260, ll 6-11*), and Satyendra "in the afternoon", without naming the exact hour, his idea of "afternoon" being from 1 or 2 P M to 4 or 5 P M, as he says at one place (*Vol 16, p 428, ll 24-25*), or from 12 noon to 4 P M, as he says at another (*ibid, p 482, ll 1-4*) But it is not disputed that after the injection the Kumar's condition began to get from bad to worse (*Bibhabati, Vol 12, p 259, l 29—p 260, l 3, and Satyendra, Vol 16, p 428, ll 27-28*), and the injection must have been given for the collapse and not for biliary colic, as Calvert practically admits when he says

"Morphia was injected certainly, quite possibly combined with atropine

Q—What was the condition of the patient then?

A—The patient was collapsed" (*Vol 2, p 217, l 37—p 218, l 2*)

Morphia, as MacGilchrist points out (*Vol 9, p 350, ll 30-34*), is usually given with atropine, and according to Price, it is an usual stimulant treatment for collapse in arsenic poisoning

BIBHABATI'S TEARS

A significant part of Bibhabati's evidence may also be referred to here According to Satyendra he accidentally met his uncle Suryyanarain Mukherjee at Chowrasta or the Mall at about 6-30 P M on the 8th May (*Vol 16, p 484, ll 25-27 and p 501, ll 8-9*), and they at once fetched Dr B B Sarkar—whether it was at his instance or at the suggestion of his uncle, need not be now considered He admits that when Dr Sarkar came, the Kumar was in a condition which he describes as "himanga" (ice-cold) (*Vol 16, p 485, ll 12-14*), though, of course, he had his own interpretation to give of the word "himanga", which would only make the hands and legs and the lower part of the body cold, but leave the upper part, from navel to neck, warm (*ibid, p 476*) Be that as it may, Bibhabati was asked if it was a fact that Dr Sarkar after examining the Kumar said that he had "gone past all

hope" (*Vol 12, p 259, ll 6-7*) This she would not admit "he did not say that in my presence" (*ibid, l 8*), she said, but could not help mentioning a fact which speaks for itself

"When my *mama* (meaning Suryyanaram) talked to me after the doctor had examined the Kumar, tears came into my eyes, but I did not cry aloud" (*ibid, p 259, ll 10-11*)

Satyendra was also questioned about it

"Q—What did he (Dr Sarkar) say after examining the Kumar?

A—He did not say it was hopeless but he said some such thing—that his condition was grave and serious"

(*Vol 16, p 485, ll 37-39*)

Again —

"Q—Did you not all think then the Kumar was dying?

A—I did not I do not know what others did I do not say that my uncle left because Dr Sarkar said the case was hopeful He waited for some time

Q—Do you suggest that your uncle, if he had human feeling, could leave at that time?

A—He also knew the Kumar would not die (*After pause*) He wanted to stay He must have realised the case was serious and wanted to stay" (*ibid, p 487, ll 4-14*)

This is probably as much as one could expect to get out of Satyendra Well might one ask, if the case was not hopeless about this time, what could have brought the tears to his sister's eyes?

SUPPOSED BUOYANT CONDITION TILL THE VERY LAST

Still the defendants would keep the Kumar in a buoyant condition, and even talking till within a few minutes of his death! According to Satyendra's diary the Kumar's last words to him a minute before life was extinct were "Tell Ashu that I feel difficulty in breathing" (*Vol I, p 306, ll 9-11*) Bibhabati, who would admit collapse, but not "profound collapse", even shortly before death, was asked

"Do you want to say the Kumar was talking during the profound collapse?

A—He talked even a little before his death

Q—But during what Dr Calvert calls 'profound collapse', did he speak?

A—He talked sometime till even some 15 minutes before his death" (*Vol 12, p 226, ll 1-10*)

Birendra Banerjee, the man who yielded only to Sarif Khan in his paroxysm of grief, gives a more graphic description

"He (Kumar) spoke five or ten minutes before his death I remember what he said He would say 'What hour of the night is it now, when will it dawn?'" (*Vol 15, p 319, ll 5-7*)

Jagat Mohini, however, as already noticed, would simply make him open his eyes once to have a look at her face, but not let him speak, and she would also have him "distorting his face convulsively" in pain while a man who

"seemed to be a doctor" was examining the chest with a stethoscope (*Vol I, p 293, ll 7-8 and p 294, ll 12-16*)

It should not be forgotten that on the defendants' own case the period between dusk and midnight is a perfect blank so far as treatment is concerned, there being admittedly no prescriptions—not even one by Dr B B Sarkar. It is also not shown that there was any telegram sent to Bara Kumar after the 3-10 P M message (*Ex 222, Vol I, p 300*),—"Kumar is seriously ill. Frequent watery motions with blood. Come sharp",—though in reply Bara Kumar wired at 4-45 P M. "Wire condition very often. Treat with best medical help. Wire immediately present condition" (*Ex 260, Vol I, p 299*). One wonders why Satyendra's resourcefulness failed him and did not lead him to suggest that he was in fact on his way to the telegraph office at about 6-30 P M to send a reply to Bara Kumar, when he was unexpectedly intercepted at the Chowrasta by his uncle Suryyanaram! The message would probably have read—"Collapse but not profound collapse. All night attendance of Civil Surgeon arranged. Macrae coming in the morning. No anxiety—at least till then. Meanwhile wire 1000 passage!"

DR B B SARKAR'S VISIT ITS SIGNIFICANCE

The next important fact referred to by the learned judge is the visit of Dr B B Sarkar shortly after 6-30 P M on the 8th May, the significance of which cannot be missed. It certainly suggests that neither Calvert nor Dr Nibaran Sen could have been in attendance at the time, for it is unthinkable that an "ordinary" doctor of "no large practice" as, according to his son's evidence (*D W 307, Vol 15, p 417, ll 10-11*) Dr Sarkar was, should be called in, if the patient was still under the treatment of senior physicians like Calvert and Dr Sen. Satyendra himself would not think of it. "It is impossible", says he, "that I would suggest this" (*Vol 16, p 500, l 35 and p 485, ll 8-9*).

The visit is now admitted—since, as we have seen, Ram Sing Subba mentioned it in his evidence. Satyendra would, however, like to say that Dr Sarkar was practically forced on him by his uncle Suryyanaram, he having been his uncle's medical attendant (*ibid, p 428, ll 1-3 and p 485, ll 6-7*). Satyendra's story is that he met his uncle quite by accident at the Chowrasta and told him about the Kumar's condition (*ibid, p 475, ll 29-30*), and in reply to his query, also informed him about the doctors who were attending (*ibid, p 484, ll 40-41*). He is positive he did not ask his uncle to get a doctor (*ibid, p 475, ll 33-34*), but when his uncle suggested it, he assented (*ibid, p 485, ll 1-3*). The story is, on the face of it, so utterly improbable that I for one refuse to believe it on Satyendra's uncorroborated testimony. If Suryyanaram was told that the Kumar was under the treatment of Calvert and Dr Nibaran Sen, one could understand his suggesting the calling in of a consultant of standing and experience, but he would certainly not go out of his way to get a junior like Dr B B Sarkar to come and see the Kumar, unless the patient was already *in extremis* and had been given up by the attending physicians. Bibhabati, on her part, does not profess to know whether Suryyanaram brought Dr Sarkar at Satyendra's request: she can neither affirm nor deny it (*Vol 12, p 258, ll 13-19 and p 262, ll 14-23*). Suryyanaram, it may be stated, had been staying at the time as a tenant in a part of "Balen Villa", the residence of Mahendra Nath Banerjee, the Government Pleader, and yet Satyendra, as he himself admits, had not cared to give him any information about the Kumar's illness (*Vol 16, p 475,*

ll 28-29 and p 501, ll 7-9) To my mind there is no answer to the suggestion that Dr Sarkar was called in by Satyendra as a last resort after Calvert and Dr Nibaran Sen had both left, having pronounced the case to be hopeless

A FEW FACTS

Mr Chaudhuri, however, contends that this is against positive testimony on the defendants' side, and he calls attention to the evidence of Satyendra (Vol 16, p 486, ll 9-12), Bibhabati (Vol 12, p 256, l 37—p 257, ll 1 et seq), Dr Ashutosh Das Gupta (Vol 16, p 298, ll 10-20) and Birendra Banerjee (Vol 15, p 353, ll 5-7) One has, however, to take note of a few facts also appearing in the defence evidence, in order to assess this testimony at its proper worth

- (i) Calvert in reply to Interrogatory No 15 does not mention Dr Sarkar as one of the physicians present during the Kumar's illness (Vol 2, p 205, ll 6-8), though, as appears from Dr Sarkar's diary under date 7th March, 1909, Dr Sarkar was known to him
- (ii) Bibhabati herself says that Calvert stayed on till dusk when he went to take his dinner (Vol 12, p 203, ll 6-7), and that Dr Sarkar also came at dusk (*ibid*, p 203, l 33)
- (iii) Jagat Mohini makes it quite clear that Calvert left the house about an hour after her arrival, i.e., at about 6 or 6-30 P.M. (Vol 1, p 281, ll 34-35 and p 293, l 24)
- (iv) The evidence as to whether Calvert and Dr Nibaran Sen were present at the time Dr Sarkar examined the Kumar is wholly discrepant

DISCREPANT EVIDENCE

Bibhabati says that Dr Sarkar came into the Kumar's room with Suryyanarain, and that she, her brother and perhaps Dr Das Gupta were present there (Vol 12, p 257, ll 2-3 and ll 10-13). Neither Calvert nor Dr Nibaran Sen came in with Dr Sarkar—this is what she remembers (*ibid*, p 259, ll 4-5). According to her, Dr Sarkar was there for about 7 to 10 minutes, and then left—she cannot say if he left the house altogether or stayed in, making it perfectly clear that she did not see him again in the course of that evening (*ibid*, p 257, ll 26-27). She is, however, careful to add that Calvert and Dr Nibaran Sen were constantly coming and going—"every 5 or 7 minutes", showing that they were in the house all the time (*ibid*, p 257, ll 1-2 and p 259, ll 3-4). She forgets that she had herself sent away Calvert for an hour or two for dinner

Dr Das Gupta has a different story to tell. He is positive that when Dr Sarkar examined the Kumar with a stethoscope and felt his pulse, Calvert and Dr Nibaran and he himself were present (Vol 16, p 298, ll 18-20 and p 316, ll 8-15). He is a witness who would not, like Bibhabati, keep Calvert at "Step Aside" right from 2 P.M. to midnight with only a break for dinner, but would bring him into the house as many as six or seven

times (*ibid*, p 297, ll 32-33) By the way, Dr Das Gupta swears that Satyendra was in the house from 5 P M to 8 P M on the 8th May (*ibid*, p 298, ll 30-32) how then could Satyendra have met his uncle at the Chowrasta at 6-30 P M ?

Satyendra, as is to be expected, attempts a bold reconciliation between the two conflicting versions. Conscious no doubt that his "recollection" may be getting mixed up with his "impression", having regard to the fact that he is "speaking of things that happened a quarter of a century ago" (*Vol 16*, p 485, ll 27-30), he has first no recollection whether the other two doctors were in the room when he himself walked into it with his uncle and Dr Sarkar, though he was positive they were in the house (*ibid*, p 477, ll 4-19), and repeats the same statement later

"When Dr B B Sarkar called, my uncle, Bibhabati and the nurses and some members of the staff were there. About the other two doctors, Dr Calvert and Nibaran, they were in the house, but I do not remember if they were in the room" (*ibid*, p 486, ll 9-12)

Asked, however, if Dr Sarkar came into the Kumar's room *again*, he adds

"A — Might have

Q — Do you remember ?

A — I think I do

When he came into the second Kumar's room, the three doctors, Dr Calvert, Sen and Ashu doctor were in the room. Dr Sarkar came into the room with them.

Q — Did Dr Sarkar examine your brother-in-law a second time ?

A — Yes

This I remember. At that time my uncle had left "Step Aside". On this second occasion Dr Sarkar was over this examination shorter time than the first. The four doctors remained in the room for about 15 minutes. Then they all came out of the room. It was after this that Col Calvert went for his dinner" (*ibid*, p 486, ll 20-34)

Birendra Banerjee, whose capacity for lying is matched only by that of some of the other witnesses for the defence, does not know if Suryyanarain came to "Step Aside" at all on the 8th evening (*Vol 15*, p 346, ll 10-13 and p 354, l 2), but is in a position to state that the Bengalee doctor, whom he cannot name, did examine the patient's heart and feel his pulse in his presence (*ibid*, p 354, ll 20-22). He is quite definite that Calvert was not in the room at the time, and as for Dr Nibaran Sen, he does not remember where he was then, but his "impression" is that they were in the room in which doctors used to sit (*ibid*, p 353, ll 1-10). He was asked if he would call in another doctor when Calvert and Dr Nibaran Sen were actually in the house and let him see the patient in their absence, and he gave a characteristic answer

"Yes, I would, if I have money, and I might have got him to see the patient without telling the other two

Q—Would it be a normal thing for you to do?

A—Might be" (*ibid*, p 353, ll 11-17)

IMPROBABILITY OF DEFENDANTS' STORY

It is scarcely necessary to add that Dr Sarkar, a junior practitioner, as he was, would have himself hesitated twice before perpetrating such a gross outrage upon professional ethics as is sought to be imputed to him. In my opinion, there is no possible escape from the conclusion arrived at by the learned judge that neither Calvert nor Dr Nibaran Sen was at the house when Dr Sarkar was brought in (*Vol 18, p 356, ll 25-29*). It will be observed that Bibhabati herself is not so positive about the presence of these two doctors at the time as her brother or Dr Das Gupta or Birendra Chandra Banerjee. She only "thinks" or "believes" they were there.

"On preceding Saturday when Calvert went to take dinner, Nibaran Babu remained, *I think*" (*Vol 12, p 248, ll 39-40*)

"When my maternal uncle brought a doctor, Dr Calvert was in the house, *I believe*

To Court Not in the patient's room, but in the side room which was a sitting room" (*ibid*, p 249, ll 8-11)

Again

"When Suryyanaram came with the doctor, Dr Calvert and Nibaran were in the "Step Aside", *I believe* I have direct knowledge in the sense that they were coming and seeing the Kumar every now and then and that was not possible unless they were in the house" (*ibid*, p 256, l 36—p 257, l 2)

Further on

Q—I put it to you that you cannot deny on oath that when this doctor came, Doctors Calvert and Nibaran were not in the house?

A—I say they were in the house

Q—Can you swear they were?

A—I did not see them seated in the house, but they were coming in so frequently that they must have been in the house"

(*ibid*, p 258, ll 28-33)

Mr Chaudhuri complains that the learned judge overlooks the fact that the Civil Surgeon would not have been allowed by the Ram to go away, as she is not said to have been in the conspiracy. The short answer is

(i) Calvert did in fact go away according to Bibhabati herself—it may be for dinner,

(ii) Jagatmohini also says, he left at about 6 or 6-30 P M, and

(iii) if Bibhabati or Satyendra or Dr Ashutosh Das Gupta is to be believed, none of the people at "Step Aside" had any fear that the Kumar was going to die, and there was no reason, therefore, why Calvert should have been unnecessarily detained (*Bibhabati, Vol 12, p 222, ll 25-26—death was most unexpected, p 224, l 23—did not know he was dying, p 236, ll 24-26—never thought his case was hopeless and he was going to die, p 259,*

ll 31-32—did not think he was dying, could understand his illness was serious, *Satyendra*, Vol 16, p 485, l 22—never thought it hopeless at any time, p 487, l 10—uncle also knew the Kumar would not die, *Ashutosh Das Gupta*, Vol 16, p 322, ll 22-23—before death, did not understand, until death actually occurred, he would die, *ibid*, l 30—even at 10 P M such a thought did not occur)

ENTRY IN DR SARKAR'S DIARY

Mr Chaudhuri next calls attention to the entry in Dr Sarkar's diary under date the 8th May "Kumar of Bhowal some hours" (Vol I, p 248), and points out that it does not mention that the Kumar was dead, and in this connection he refers to the evidence of D W 426, Tarapada Banerji, then spending the week-end as a guest of Dr Sarkar at his house "North View", who says that he had a conversation with the doctor about the second Kumar the same night at about 10 P M, but heard the news of death only the next morning, showing that the Kumar could not have died before Dr Sarkar returned home from "Step Aside" (Vol 17, p 346, l 29—p 347, l 1) The diary, however, appears to me to support the plaintiff's case in so far as it mentions "some hours" This in fact makes it difficult for Mr Chaudhuri to dismiss Dr Sarkar from "Step Aside" after only a few minutes' stay, as he would have liked to do, and he is obliged to keep him there till about 9 P M, but not beyond, the improbability of which, however, will be at once apparent Admittedly, the Kumar's condition was getting from bad to worse, and if Dr Sarkar could stay till 9 P M, it is unthinkable he should be allowed to go away until at least Calvert had returned from dinner, which according to Satyendra Calvert did after about an hour and a half (Vol 16, p 484, ll 18-19) It is not the defendants' case that Dr Sarkar left with Suryyanaram according to Satyendra, Suryyanaram being a sick man, was asked to go away, though he himself wanted to stay (*ibid*, p 487, ll 17-18) Bibhabati also says the same (Vol 12, p 219, ll 11-14) Dr Sarkar, however, stayed back Satyendra states in fact—"He left leaving Dr Sarkar behind" (Vol 16, p 487, l 19) If the defendants are right that the Kumar died at about midnight, it is only reasonable to suppose that Dr Sarkar should have waited till then, and in that case he could not of course have any conversation with Tarapada Banerji about the Kumar at 10 P M as this witness states The more consistent view would undoubtedly be that Dr Sarkar left at about 9 P M because the Kumar was dead, and as the learned judge points out (Vol 18, p 356, ll 37-39), this would be quite in keeping with what any decent Bengalee might be expected to do in the circumstances—not to leave immediately after death, but to wait for some time till the body was about to be taken away for cremation As for the diary not mentioning the Kumar's death, this is wholly inconclusive in the first place, it is not shown that it was Dr Sarkar's practice to record in it the death of every patient, and secondly, according to Satyendra's diary Dr Sarkar would be present at death, and yet there would be no record of the fact of death in his diary

TARAPADA BANERJI'S EVIDENCE

As regards the evidence of Tarapada Banerji, it comes in a questionable shape and one is not much impressed by it None of the other defence witnesses mention his name at all, except Anuplal alias Neru Goswami,

also of Darjeeling, D W 411, (*Vol 17, p 315, ll 17-18*), who was his friend for over thirty years, and was examined only a day earlier (*ibid, p 350, l 9 and ll 25-26*) On his own evidence the witness hears of the Kumar's death in Commercial Row at 8 A M on the 9th morning, and he at once proceeds to "Step Aside", though nobody asks him to do so and he can apparently suggest no reason for it (*ibid, p 346, ll 34-37, and p 347, ll 6-7*) He did not know the Kumar (*ibid, p 347, l 9*), still the news of his death interests him so much that not only does he go there, but he observes the dead body so carefully that even twenty-five years after he remembers that it was the uncovered face of the Kumar which he saw that morning One wonders what led him to treasure up in his memory such useful evidence for the defendants Dr B B Sarkar's son, Bejah Behari Sarkar, had been already examined by the defendants, but it is surprising that no question was put to him as to when his father returned from "Step Aside" on the 8th evening, or whether Tarapada Banerji was then staying with them as their guest, much less whether Dr Sarkar came and made any report about the Kumar to anybody in the house According to Tarapada Banerji, Dr Sarkar's son was there on that day (*ibid, p 351, l 11*) It is also worthy of note that Dr Sarkar's widow was not called, though it appears from Tarapada Banerji's evidence that she was living (*ibid, p 347, ll 35-39*)

The defendants overlook the fact that in trying to exclude Dr Sarkar from the house at the time the Kumar is supposed to have died, they get involved in hopeless inconsistencies For one thing, as pointed out before, this would mean their making a case contrary to Satyendra's own diary which expressly mentions his name as one of the doctors said to be attending at the time of death Satyendra no doubt attempts to explain away the entry

"As he (Dr Sarkar) did attend on the night of death and as he was there up to about a few hours before the death of the Kumar, I did not separately write his name, but mentioned his name in the list of the doctors who attended the Kumar at the time of his death" (*Vol 16, p 477, ll 32-35*)

But on such an explanation, this entry could hardly be of any use to the defendants, for the names of the other doctors might equally have been put down, though they were not present at the hour of death The fact seems to be, as the learned judge puts it pithily

"He (Satyendra) says, it is true of all except B B Sarkar It is true of nobody except Dr B B Sarkar and Dr Ashutosh" (*Vol 18, p 357, ll 17-18*)

EVIDENCE OF MAITRA GROUP

It remains now to refer to a body of important evidence, coming from four witnesses on the plaintiff's side who have been designated by Mr Chaudhuri as the "Maitra group" or the "Professorial group" These are

- (1) P W 578, Principal S N Maitra (*Vol 8, pp 12-16*),
- (2) P W 840, Dr Radha Kumud Mukherji (*Vol 9, pp 436-438*);
- (3) P W 841, Dr Hiralal Roy (*Vol 9, pp 439-442*) and
- (4) P.W 1021, Nagendra Nath Rakshit (*Vol 12, pp 10-11*)

They were all admittedly staying at the Lewis Jubilee Sanitarium in the month of May, 1909, and their concurrent testimony is that one evening while they were sitting in the Common Room of the Sanitarium, they got the news of the Kumar's death some time before the dinner hour, which was 8 or 8-30 P.M. The messenger or messengers who brought the news asked for men to carry the dead body to the burning ground. None of them, however, went. If this evidence is accepted, there can be no doubt that it fully proves the plaintiff's case of death at dusk. As the learned judge points out (*Vol 18, p 361, ll 9-10*), there is absolutely nothing going to the credit of these witnesses, nothing even suggested, and he considers them to be "gentlemen of unimpeachable credit". They are all absolutely disinterested witnesses, and one has only to look at their evidence and at their standing and status as elicited from them, to be convinced that they have not come to pledge their oath in the interest of any particular party. They have given perfectly straightforward evidence without trying to say a word more than they recollect. Mr Chaudhuri himself frankly conceded before us that he did not impeach their honesty or ascribe any *malafides* to them.

MR CHAUDHURI'S COMMENTS

Mr Chaudhuri's comments on the evidence of these witnesses may be summarised as follows —

- (i) that the evidence is not admissible under the principle of *res gestae*,
- (ii) that even if admissible, it is of very little evidentiary value, and
- (iii) that the evidence is really helpful to the defence

INADMISSIBILITY AS *RES GESTAE*

As to (i), the point was taken in the trial court, and this is what the learned judge says

"I find that these gentlemen did receive the news of death from a messenger in the Common Room of the Sanitarium before 8 P.M. It was contended that their testimony was not evidence, but hearsay. It was part of the *res gestae*, like sending to an undertaker in England" (*Vol 18, p 361, ll 39-43*)

Mr Chaudhuri suggests that a portion of the entry in Satyendra's diary is taken where it is stated that he sent for men to the Sanitarium and this is sought to be connected with the message supposed to have been brought to the Common Room, though the man who brought it is not shown to have come from "Step Aside", and though Satyendra's diary refers to a messenger sent after death at midnight. It is contended accordingly that the evidence is not admissible.

It is true that the Maitra group are unable to say who brought the news to them, or whether it was brought by one or more than one, but they are definite that the person or person who came made a request for men to carry the dead body, which means that the message came from "Step Aside". To make the evidence admissible, it is not at all necessary to connect it with the entry in Satyendra's diary. Death of the second Kumar was undoubtedly a fact in issue, and the sending out of a messenger or messengers

shortly after the event to collect men for the funeral would certainly be part of the *res gestae*, it would be the event speaking for itself, not what the people said when talking about it. I do not see why in these circumstances, s 6, or failing this, s 7 of the Indian Evidence Act should not apply, and the fact spoken to by the witnesses should not be relevant as a fact which was the "occasion" or "effect" of a fact in issue. In any case, it would be admissible under s 9, as being a fact which "fixed the time" at which death happened, or alternatively, under s 11, as a fact which would be "inconsistent with" death at midnight, or which by itself and also in connection with other facts would make death at dusk "highly probable" and death at midnight "highly improbable", death at dusk or death at midnight being a fact in issue or relevant fact. In my opinion there is no substance in Mr Chaudhuri's point.

SUPPOSED CONTRADICTION WITH OTHER EVIDENCE

(ii) As to Mr Chaudhuri's next objection, he first invites the court to contrast this evidence with that of two other witnesses on the plaintiff's side, Padmini Mohon Neogy, P W 655, (*Vol 8, pp 249-255*) and Surendra Nath Roy Chowdhuri (*Vol 2, pp 468-481*), without, however, accepting the evidence of either. Both these witnesses, it is admitted, were staying at the Sanitarium at the time.

PADMINI MOHON NEOGY

Padmini Mohon Neogy says that a man came to the Sanitarium at about 7-30 or 8 P M to call men for the cremation, giving the time "by guess" (*Vol 8, p 250, ll 12-13*). In cross-examination it is put to him, without showing him the statement, that in the Defamation Case he had stated that the party from the Sanitarium went to "Step Aside" at 7-30 P M. He does not remember, but if he had said so, it must be "substantially correct—not counting a difference of 10 or 20 minutes", as says (*ibid, p 251, ll 10-11*). Mr Chaudhuri finds in this a ground to argue that as this witness was at "Step Aside" at 7-30 P M, the news must have been received at the Sanitarium about an hour earlier—that is to say, about the time Satyendra is supposed to have met his uncle at the Chowrasta when the Kumar was still alive,—and that would be wholly at variance with the evidence of the Maitra group.

All I need say is that Mr Chaudhuri must find his case very weak indeed if he has to rely on such alleged discrepancies. In the first place, it would be hardly fair to pin down the witness so rigidly to his timings, which, deposing after so many years, he could have given only by guess. Secondly, his present evidence shows that he got the news of death at 7-30 or 8 P M, and this quite fits in with the timings indicated by the Professorial group, none of them are definite as to the precise hour when they heard the news—all that they remember is that they got it before the dinner hour which they fix at about 8 or 8-30 P M (*S N Maitra, Vol 8, p 12, ll 20-21, Radha Kumud Mukherji, Vol 9, p 437, ll 6-8, Hiralal Roy, Vol 9, p 439, ll 31-32, Nagendra Nath Rakshit, Vol 12, p 10, ll 33-34*). There is no cross-examination of any of these witnesses on the point. As for Padmini Mohon Neogy's supposed statement in the Defamation Case, his deposition has not been put in evidence by the defendants, and no

particular passage from it was put to the witness, as undoubtedly would have been done under s 145 of the Indian Evidence Act, if there was a real contradiction. An extract from his deposition as D W 21 in the Defamation Case is quoted in paragraph 27 of the plaintiff's memorial to the Board of Revenue, Ex J and is to this effect

"They with a party of 7 or 8 men went from the L. J Sanitarium and followed the corpse that very night *between 8 and 9*, but that they returned from the cremation ground on the approach of rain and storm" (*Vol III, p 98, ll 29-33*)

It will not be wrong, therefore, to hold, as the learned judge does, that there is "no inconsistency in his account in any material particular" (*Vol 18, p 365, ll 8-9*). In any case any such trivial discrepancies as Mr Chaudhuri indicates would leave the plaintiff's story wholly unaffected in its broad outline.

SURENDRA CHANDRA ROY CHOWDHURI

As regards the other witness Surendra Chandra Roy Chowdhuri, Mr Chaudhuri tries to show, unsuccessfully, again, as I think, that he gives a version materially different from the Maitra group in so far as he says that the messenger who came to the Sanitarium never asked for men to carry the dead body. One fails to see what is the point in this criticism—whether it is merely to show a contradiction in the evidence on the plaintiff's side, or to falsify the testimony of the Professor witnesses. Their testimony is in fact concurrent and wholly unshaken by cross-examination. S N Maitra first states no doubt that the man who brought the news "presumably" made a request for men to carry the dead body to the burning ghat, but at once adds "Of the request I am absolutely sure" (*Vol 8, p 12, ll 32-34*). The only cross-examination is if he knew the name of the man, and if he wanted to say that the man burst into the Common Room "as a bomb-shell" (*ibid, p 15, ll 10-14*). Radha Kumud Mukherji says "They wanted to find out if men could be had to help them to carry the corpse. So far as I can recollect only one man came and asked for this help" (*Vol 9, p 437, ll 2-4*). In cross-examination he states "I cannot recall the appearance of the person or persons who gave the death news, nor what he said except generally that he announced the death" (*ibid, p 438, ll 27-28*). Hiralal Roy similarly says in his examination-in-chief "The death news was brought to us as our help was wanted to carry the dead body to the cremation ground" (*Vol 9, p 439, ll 33-34*), and in cross-examination "I do not remember exactly what he said" (*ibid, p 441, ll 27-28*). Nagendra Nath Rakshit's statement, there being no cross-examination on the point, is "We were seated as usual in Nripendra Narain Hall, used as a Common Room, when one or two men came, said that the Bhowal Kumar was dead, and asked for men to help to cremate him" (*Vol 12, p 10, ll 31-33*). There can be no doubt that the evidence which these gentlemen give has the ring of truth in it, and merely because one or two of them cannot recall the exact words of the messenger or messengers, it does not follow that they are not giving a true story.

As for the supposed contradiction with the evidence of Surendra Chandra Roy Chowdhuri, this is what this witness says in examination-in-chief

"Q—From whom did you hear it (news of the Kumar's death)?

A—A man on coming out from the Kumar's house gave out that

Q—What did he give out?

A—The Kumar has died, we want men for the cremation" (Vol 2, p 470, ll 3-7)

In cross-examination Surendra Chandra Roy Chowdhuri gives the same answer

"We remained sitting he came to us and told that he also wanted men for cremation from me I requested my own officer to go" (*ibid*, p 475, ll 29-31)

There is clearly no discrepancy so far Mr Chaudhuri, however, relies on the answer to the next question

Q—Is this statement 'I had no talk with him' true?

A—He was making a general appeal I volunteered to send my officer whom I requested to go I had no personal talk with him" (*ibid*, ll 32-34)

Taking the answer, very strictly, this might perhaps be said, to imply that the messenger made no personal appeal to the witness for help, but it certainly does not and cannot mean that he did not ask for men to carry the dead body Where, then, is the contradiction?

It is to be observed, again, that the statement which is put to the witness is not shown to have been taken from any previous deposition to which his attention was called. He had admittedly given a statement to a Deputy Magistrate at Rangpur on the 21st July, 1921, and also deposed in the Defamation Case about two years later (Vol 2, p. 471, ll 20-23, and p 474, ll 17-18) The court deposition was not shown to him in cross-examination, but only the Rangpur statement (Vol 2, p 476, l 4), which was marked *Ex Z(338) (a)*, (Vol II, p 256), this being in the form of a series of answers to questions—presumably the questions, (*Ex 445, Vol II, p 246*) which had been framed by R C Datta, D W 435 (Vol. 17, p 412, l 24) There is no reference in it whatever to any man having come to the Sanitarium with the news of death If, therefore, the statement which was put to the witness was taken from his deposition in court, as was presumably the case, one fails to understand how in view of s 145 of the Indian Evidence Act it is open to Mr Chaudhuri to suggest that there was any contradiction between what he then said and his present evidence

"UNREAL" AND "UNNATURAL" EVIDENCE

Mr Chaudhuri next comments on the character of the evidence of the Maitra group, which he says, "has no body in it", is "unnatural" and "unreal", a very picturesque characterisation no doubt, but perhaps more appropriately applicable to the comment itself He refers particularly to the evidence of Principal S N Maitra, the "precursor" of the group, as he calls him, as to who brought the news of death to the Sanitarium Common Room It is a strange story altogether, he says, which the witness tells—a messenger bursting in like a "bomb-shell" (Vol 8, p 15, l 11), this being a word which learned counsel must himself have put to him in cross-examination The witness explained what he meant by it "I call him a bomb-shell, as he broke up our talk" (*ibid*, l 15)—a fact which is testified to also by Hiralal Roy "After the death news, our gathering broke up" (Vol 9, p 439, ll 36-37)

FALSE NOTIONS OF PROPRIETY BORROWED FROM THE WEST

Apparently, according to Mr Chaudhuri there would be nothing wrong in sending for men from the Sanitarium for the cremation, as admittedly Satyendra did it himself, but what shocks him is that instead of a durwan carrying a "chit" to Rajendra Nath Sett, and Rajendra Nath Sett going round to collect men from among the other boarders (*Satyendra*, Vol 16, p 478, ll 22-29 and Vol 1, p 306, ll 13-14), a messenger should walk into the Common Room straight to ask if anyone would come and assist at the funeral, though the Common Room was a public place to which admission was unrestricted and where one would normally expect of an evening most of the boarders to foregather. If I may say so with respect, a comment of this kind only illustrates the danger of one being steeped in notions of propriety and decorum borrowed from the West and not being able to shed them in judging the actions of people of this country. As even a Bengalee schoolboy knows, to assist at a cremation is considered a most meritorious form of friendly service, and no Hindu visiting or sending to the house of a stranger, much less to a common meeting place like the Sanitarium, to ask for such help need consider himself guilty of an act of gross impertinence, say what Mr Chaudhuri may.

The evidence on the plaintiff's side, it will be observed, is consistent and definite that a messenger or messengers came to the Sanitarium, not to proclaim the news of the Kumar's death, but to try and procure men who might help in carrying the dead body to the cremation ground. One may be forgiven, therefore, for pointing out that it was not like the visit of a herald come to announce "*le roi est mort venez enterrer*", as Mr Chaudhuri would put it. This is a bit of cheap sarcasm which counsel for the respondent might well fling back at him, for it is Mr Chaudhuri's witness Satyendra, who, contrary to his own diary, is now very anxious to maintain that he sent out "chits" at dead of night only to convey the news of death, and not to get men for the cremation (Vol 16, p 748, ll 26-29), as if there would be any object in disturbing people at that hour to announce an event in which they were not likely to be interested. Conduct of this kind does not apparently strike Mr Chaudhuri as "unnatural" or "unreal".

I find it difficult to appreciate what Mr Chaudhuri means by saying that the evidence of the Maitra group has "no body in it" if he is only reproducing in effect an observation which fell from one of my learned brothers in the course of argument that the evidence is "not clothed with any kind of dress which would give it the appearance of reality", all I can say is that truth disdains to be decked in tinsel trappings.

NO DETAILS OF CONDOLENCE MEETING

Another infirmity which, according to Mr Chaudhuri, attaches to this body of evidence, is that the witnesses, though remembering the incident connected with the delivery of the news of death at the Sanitarium, have little or no recollection of the details of the condolence meeting which was held there on the 16th May, 1909. Every one of these witnesses, it appears, was cross-examined about this meeting. Principal Maitra does not remember the date certainly, but might have attended it (Vol 8, p 13, ll 36-39). His mind, he frankly says, is a perfect blank with regard to it, but when it is suggested that his name appears in the list of persons present, he is prepared to admit he was there (*ibid*, p 14, ll 7-9 and ll 34-35 and p 15, ll 1-2).

Radha Kumud Mukherji similarly says "Of the condolence meeting I have no recollection, but if anybody says I attended it, I would not deny it. I do not remember who the Chairman was. I do not see any reason to deny that I was present at the meeting, if it is in the press report" (*Vol 9, p 438, ll 31-16*) Hiralal Roy remembers the meeting, and remembers too that Prof Maitra, Radha Kumud Mukherji and perhaps Nagendra Nath Rakshit were also there, and Prof Maitra sang at the meeting (*Vol 9, p 440, ll 1-4*) He had no idea that it was a faked meeting (*ibid, l 24*) He recollects that the meeting began in the late afternoon, but not how long it lasted or other details (*ibid, p 442, ll 9-13*) Nagendra Nath Rakshit admits having attended the condolence meeting, but cannot say if Prof Maitra was there. It was held most probably at or about sunset (*Vol 12, p 11, ll 11-13 and ll 23-24*)

If the cross-examination was directed to a memory test, the learned judge has, in my opinion, given adequate reasons for holding that the witnesses have all stood such test successfully (*Vol 18, p 361, ll 20-37*) There would be no point whatever in their admitting or denying their presence at the meeting. Hiralal Roy and Nagendra Nath Rakshit in fact both say that they attended, though, be it noted, their names are not to be found in the list of persons present, produced by the defendants (*Ex Z(118), Vol 1, pp 462-463*) The evidence of this group of witnesses regarding the condolence meeting seems to me only to confirm its truthful character.

Mr Chaudhuri next points out that Prof Maitra admits in his examination-in-chief that Haran Chandra Chakladar was present in the Common Room when the news of death was received (*Vol 8, p 12, l 26*), but modifies his answer in cross-examination when it is put to him that he said so because Haran Chandra Chakladar was one of the "National College group" who used to be generally present there (*ibid, p 15, l 28—p 16, l 6*) This is really no contradiction, but only a plain, honest explanation of his first statement.

RECOLLECTIONS "MIXED UP"

Mr Chaudhuri's further attack on the evidentiary value of this body of testimony, particularly as regards the news of death having reached the Sanitarium in the evening of the 8th May, is that the witnesses having read about the case in the newspapers and discussed it among themselves, must have mixed up their recollection with the impressions they had so formed. In particular he suggests that they were making a confusion between a premature report of death which they might have heard and an actual request for men to carry the dead body.

This is partly the explanation which Bibhabati herself suggested in her evidence.

"Q—Are you aware up to date that Prof Radha Kumud Mukherji, Prof Hiralal Roy, Principal S N Maitra and some other gentlemen have deposed in the case about word being brought to them at the Sanitarium about second Kumar's death in the evening before dinner time?

A—I read that in the papers.

Q—Would you kindly tell the court that they deliberately perjured themselves in giving their evidence? (*Objected to Allowed*)

A—I do not think they gave false evidence, but I think they made a mistake after the lapse of time and after continuously hearing about it" (*Vol 12, p 253, ll 28-36*)

Nobody would expect her hard-headed brother to be equally charitable. He would spare Dr. Radha Kumud Mukherji to the extent of not imputing to him a "sinister motive", having regard to his position (*Vol 16, p 479, ll 17-18 and ll 22-23*). But as regards Principal Maitra, he is perfectly downright, and says, "His statement is false" (*ibid, ll 19-20*).

It will be seen that Principal Maitra does not speak to having had any discussion with any body regarding this matter. Radha Kumud Mukherji, however, says that he had heard about the supposed return of the Kumar after death (*Vol 9, p 437, ll 32-37*), and also that he had read Principal Maitra's evidence in the 'Statesman' (*ibid, ll 38-39*). He had carefully noted that evidence on account of its "possibilities" for him, as he puts it the reading of it had refreshed his memory on the particular point (*ibid, p 438, ll 9-10*). The witness had also a talk with Dr. Hiralal Roy on the subject of their stay at Darjeeling and other incidents to which he had deposed (*ibid, p 438, ll 19-25*). Hiralal Roy also admits having come to know from newspapers that the Kumar, reported dead, had come back (*Vol 9, p 441, ll 3-4*) and having had a discussion about the Darjeeling incident with Radha Kumud Mukherji (*ibid, ll 14-15*). He says quite frankly that a gentleman had seen him with a view to his giving evidence in the case, from whom he learnt that Principal Maitra had already deposed. His discussion with Radha Kumud Mukherji is said to have taken place before the visit of this gentleman (*ibid, ll 17-18*). Nagendra Nath Rakshit merely states that he recalled the incident when he read about the case in the papers. He also read that Principal Maitra had deposed, but did not read his deposition except so far as it was in the 'Statesman' which was very short (*Vol 12, p 11, ll 1-5*).

There is no cross-examination of any of the witnesses that their memory of the past might have been distorted by what they had read or heard. Their evidence is indeed so straightforward that I do not think there can be any room for such a suggestion. They are witnesses who would not pledge their oath to any thing as true to their recollection, if they were not sure about it. A mistaken recollection is not of course incompatible with honesty, but an honest witness, if he says he recollects, may be taken to be giving his recollection correctly, and not mixing it up with extraneous impressions. Prof. Maitra says quite definitely that he has a "vivid recollection" of a man coming with the news of death and breaking up the party (*Vol 8, p 15, ll 13-14*), while Radha Kumud Mukherji says "I definitely remember the news came" (*Vol 9, p 437, l 6*). The witness has a bad memory for dates, but not for "incidents" (*ibid, l 21*). Hiralal Roy was asked "This is a matter that took place about 25 years ago—can you be definite about it? About the time?" His answer was "Yes, about the time and the man coming to announce death" (*Vol 9, p 441, ll 34-36*). Nagendra Nath Rakshit on his part is not so definite. He does not remember at what precise hour the messenger or messengers came, but it was before 8 P.M. (*Vol 12, p 12, p 10, ll 33-34*). Where the witnesses are hazy or indistinct in their recollection, they do not for a moment conceal the fact.

FUTILITY OF MR. CHAUDHURI'S ARGUMENT

It will not do, therefore, for Mr. Chaudhuri to try and explain away all this evidence by referring to the unconscious effect of reading and discussion on the minds of the witnesses. Nothing is gained by his citing in this connection as a sort of authority what he describes as "a valuable answer" which was elicited from plaintiff's witness Surendra Chandra Roy Chowdhuri.

who, a person of undoubted position and standing in life, with no object to gain, and no interest to serve, comes in all the same for castigation at Mr Chaudhuri's hands as "one of the biggest liars who have deposed in the case" This witness, as pointed out before, had given a statement to a Deputy Magistrate at Rangpur in 1921 (*Ex Z(338) (a), Vol II, p 256*), which was put to him in cross-examination, and he was asked if he had the same memory at the time of giving evidence as when he had made that statement. He answered "On account of repeated discussions, association of ideas is the same. The association of ideas commenced from the time I made this statement" (*Vol 2, p 476, ll 10-14*). A perfectly sound psychological proposition, however infelicitously expressed—which nobody is concerned to dispute. But Mr Chaudhuri does not care to elucidate how "repeated discussions" operating through the laws of association of ideas, must inevitably produce distorted images in the mind. With all respect, an argument of this kind need only be stated to demonstrate its utter futility.

FALSE ANALOGY WITH DEBABRATA MUKHERJEE'S EVIDENCE

Mr Chaudhuri quotes also a comment which the learned judge makes in discussing the evidence of one of the defendants' witnesses, Debabrata Mukherjee (*Vol 2, pp 113-121*), concerning which he remarks "That shows that things were being heard, and getting mixed up with memory" (*Vol 18, p 306, ll 8-9*), learned counsel's point evidently being that if such a theory is legitimate to explain away the testimony of this witness, it might be equally applicable in the case of the Maitra group. Mr Chaudhuri forgets that it all depends on the quality of the evidence given by the witness or witnesses, for it cannot be laid down as a general proposition that if things are heard, they must get "mixed up" with memory in every case.

So far as Debabrata Mukherji is concerned, his evidence itself shows that the remark of the learned judge about it is more than justified. He is a retired member of the Bengal Judicial Service who was posted at Dacca in 1921, and speaks to having met and talked to the plaintiff on several occasions at Buckland Bund during his stay there. He had previously given a statement to R. C. Datta, Deputy Magistrate, in the course of the Lindsay enquiry (*Ex Z(110), Vol II, p 231*). At the end of it he appended a further statement to this effect:

"I remember that on another occasion I heard the sadhu telling some upcountrymen, 'what can you give to me, I have *left* my father, mother and wife. I do not require even a house to live in' " (*ibid, p 232, ll 2-4*).

In cross-examination it seemed to him on looking at the statement that the sadhu had said "I have *lost* my mother and father. what do I care for?" (*Vol 2, p 116, ll 25-26*). One has then only to look at the re-examination on the point:

"Q—Did you tell this to Romesh Babu, 'I remember that on another occasion, I heard the sadhu telling some upcountrymen, 'what can you give to me, I have *left* my father, mother and wife. I do not require even a house to live in'?" (*Objected to*)

A—Yes, I remember, there was such talk. I said so to Romesh Babu.

Q—And is this true? (*Objected to*)

A—Yes.

Q—You have said to-day that he (the plaintiff) said—‘I have neither father nor mother, what do I care for’? *You have said this from your present impression?* (*Objected to*)

A—*It is a mistake on my part I had no recollection On looking at the additional statement of Ex A, I remember that what I stated there was true*” (*ibid*, p 121, ll 11-23)

The answer he gave in cross-examination that the sadhu had said he had lost his parents—not that he had left them, as was the original statement of the witness to R C Datta,—would undoubtedly have suited the defendants better, as it would have been consistent with the report which the defendants got from Surendra Kumar Chakrabarty (*D W* 408, *Vol* 17, pp 268-288) only a few days after Debabrata Mukherjee’s examination by R C Datta, regarding the identity of the plaintiff as Sunder Das *ahas* Mal Singh of Anjla. Debabrata Mukherjee gave his statement on the 26th May, 1921, and Surendra Kumar Chakrabarty made his report a month later on the 27th June, 1921, purporting to have traced out the antecedents of the sadhu and setting out the information he had gathered from the *Guru Bawa Dharam Das* regarding Sunder Das “Sunder Das has not got his parents alive” (*Ex Z*(347), *Vol* II, p 330, l 14), or as is put in the English translation of the same report which Needham sent to Lindsay on the 2nd July, 1921, (*Ex* 338, *Vol* II, p 334, l 4) “Sunder Das’ parents are not alive”

Can there be any wonder after this that by his evidence Debabrata Mukherjee invited a comment like the one made by the learned judge about him? It will be observed that his former statement was put to him in examination-in-chief,—though it is difficult to see how the Commissioner could allow it to go in under the provisions of s 157 or s 159 of the Evidence Act, either to corroborate the witness or to refresh his memory (*Vol* 18, p 63, ll 26-28),—and it was only after the contradiction came out in cross-examination that the defendants’ advocate sought to repair the mischief by himself suggesting to the witness in re-examination,—and that, be it noted, with doubtful legality,—“You have said this from your present impression?” The witness was not slow to take the hint, and tried to explain it away by saying that it was a mistake on his part he had no recollection. It will be seen, however, that he had looked at his original statement before he gave his answer in cross-examination (*Vol* 2, p 116, ll 25-26)

Say what Mr Chaudhuri may, none of the witnesses of the Maitra group can be even remotely accused of having betrayed such a lamentable lapse or confusion of memory

THEORY OF PREMATURE REPORT OF DEATH

One can appreciate Mr Chaudhuri’s difficulty in trying to discount the evidence of these witnesses without impeaching their credit, but the suggestion which he next makes to this end leaves one wondering whether he means to be taken seriously. It is to the effect that there might have been a premature report of the Kumar’s death sent to the Sanitarium on the 8th evening, and that the witnesses were possibly mixing up their recollection of such a report with the fact of men being called the next morning for the cremation. We know in our own experience, said learned counsel, that it has often happened, when a man is not actually dead he has been reported to have died, and so he was willing to concede for the sake of this batch of witnesses it might have happened in the present case. The difficulty,

however, in his way is that apart from its improbability, such a suggestion was specifically denied by his own witnesses Satyendranath Banerjee and Dr Ashutosh Das Gupta

At a much earlier stage, as complainant in the Defamation Case, it was no doubt Dr Ashutosh Das Gupta's instruction to his pleader to put this case to the defence witnesses, as is evident from the answer given by one such witness Surendra Chandra Roy Chowdhury in the course of his cross-examination in that trial. The answer is quoted by Dr Das Gupta from the deposition of the witness which was shown to him during his own cross-examination in the present case, and is to this effect, as he himself reads it

"(Shown passage in the deposition of Surendra Roy Chowdhury)

I read 'He (that is, the messenger who came to the Sanitarium) did not say the Kumar is dying. He gave out the Kumar is dead'" (*Vol 16, p 323, ll 23-25*)

Dr Das Gupta, however, definitely resiled from this case in his present evidence,—though no doubt in a most unconvincing manner. In cross-examination he first admitted that it was he who had given instructions to his pleader in the criminal trial regarding the events at Darjeeling (*ibid, p 323, ll 16-18*), but pretended not to remember having ever heard of Surendra Roy Chowdhury—not even when he was reminded of the evidence of this witness in the Defamation Case as to messengers having come to the Sanitarium after dusk to call people for the cremation (*ibid, ll 19-22*). Then when he was shown the passage from the deposition, he unblushingly said that he had not given "this particular instruction" to his pleader (*ibid, ll 33-35*), and on the following day, withdrew his previous admission completely

"I want to withdraw my statement on the first day of my cross-examination that I gave instructions for the cross-examination of defence witnesses" (*ibid, p 336, ll 1-3*)

It may be perhaps interesting to note the characteristic equivocation which he then indulged in

"Q—Do you want to withdraw your statement that you instructed Akhoy Babu about Darjeeling incidents?

A—No

Q—You also said that in the Defamation Case you instructed your pleaders about Darjeeling incidents and that no body else did so in your presence, and that you did not want to suggest any body else did so. Do you want to withdraw that?

A—No, but some might have done so—I do not say this was done in my presence. I do not suggest that my pleader in the Defamation Case was improperly influenced by the opposite party (*objected to*). I cannot say who else besides myself could possibly have instructed my pleader about Darjeeling incidents" (*ibid, p 336, ll 4-16*)

However unsatisfactory it may be, the fact remains that Dr Ashutosh Das Gupta now definitely refuses to adhere to the case he must have previously made

Satyendra does not suffer from the handicap of an earlier statement, and he would naturally not think of any such case. His statement is quite definite

"It is impossible that any body could go to the Sanitarium at dusk to say that the Kumar was dead, and would gentlemen come to take him for cremation? The Kumar was not dead"

(*Vol 16, p 495, ll 11-13*)

The theory of a premature death report, like the other grounds advanced by Mr Chaudhuri to discredit the evidence of the Maitra group, must consequently fail

SUPPOSED SUPPORT OF DEFENCE CASE BY MAITRA GROUP

(iii) Mr Chaudhuri's final submission regarding this body of evidence is that it is really helpful to the defence, and he puts his argument in this way if any thing unusual had happened about the alleged evening cremation, these witnesses were bound to have heard about it and remembered it, but none of them say so, on the other hand, they admit that they never heard during their stay at Darjeeling that the Kumar had not died or that he had not been cremated

Principal Maitra was asked in cross-examination—"Did you hear the next day that the second Kumar was cremated that day with a full show of ceremony after a procession"? He answered—"No No, so far as I remember Not the next day" (*Vol 8, p 13, ll 24-26*) Then, again, he said to court—"I had no reason to believe that the Kumar was not dead during my stay at Darjeeling" (*ibid, p 16, ll 7-8*)

Radha Kumud Mukherjee heard of the supposed return of the Kumar after death only from press reports a few months before he gave his evidence,, showing that he could not have heard any thing during his stay at Darjeeling which might lead him to suspect that the Kumar had not died. (*Vol 9, p 437, ll 30-37*)

Hiralal Roy says quite plainly that he had no reason to believe during his visit to Darjeeling that the body had not been cremated or that the Kumar was not dead, and had no idea that the condolence meeting was a faked meeting (*Vol 9, p 440, ll 20-25*)

Nagendra Nath Rakshit admits the condolence meeting, but cannot recall any thing else he had heard about the Kumar at Darjeeling (*Vol 12, p 11, ll 11-13*)

Admittedly these witnesses all stayed at Darjeeling for some time after the condolence meeting, and their evidence undoubtedly establishes the fact that so long as they were there, they heard nothing which might raise any doubt in their minds that the Kumar had not died, or that his body had not been cremated It seems to me, however, to be going too far to draw from this a definite conclusion adverse to the plaintiff, and as necessarily disproving his case regarding either of these events

STORY OF MISSING BODY IF KNOWN AT SANITARIUM

It need not be disputed that the story of the missing body must have reached the Sanitarium, if not the same night, at any rate on the day following Most of the plaintiff's witnesses who speak about people from the Sanitarium having gone to the cremation ground no doubt say that these persons did not wait there long enough to have witnessed all the strange happenings of that night, but there is also evidence to the effect that some of the Sanitarium party returned the same evening with the news that the body could not be cremated on account of rain and storm

Thus, Padmini Mohon Neogy, P W 655, the only witness on the plaintiff's side to have gone to the cremation from the Sanitarium, says that he was one of a party of 7 or 8 who went (*Vol 8, p 249, ll 29-30*), but according to him, they all came back almost immediately after reaching the *sasan*, as the weather was threatening (*ibid, 249, ll 36-37, p 250, ll 16-17 and p 251, ll 22-23*) To the same effect is the evidence of Manmatha Nath Chowdhuri, P W 986, (*Vol 11, pp 276-283*), another witness of the evening cremation, though not of the Sanitarium, who has a special reason for remembering the fact of his going (*ibid, p 276, ll 36-39*) and who says that a batch of 5 or 6 people went from the Sanitarium, but that they left the *sasan* directly after they got there (*ibid, p 280, ll 32-33, p 283, ll 27-30*), he himself leaving a few minutes later (*ibid, p 280, ll 23-25 and ll 34-35*) Sitanta Kumar Bagchi, again, who also attended the evening cremation (*Vol 2, pp 433-467*), admits that several persons from the Sanitarium joined the procession (*ibid, p 435, ll 9-10, and p 450, ll 16-21*), but does not say that any of this party stayed at the cremation ground till the end, or at any rate, till the body was missed Indra Shing Satri, P W 963, similarly says that "some Babus of the Sanitarium" got into the procession (*Vol 11, p 50, l 2*), but gives no indication how long they remained at the *sasan* By the way, according to this witness, these men joined the procession *en route*, as is stated also by Sitanta Kumar Bagchi (*Vol 2, p 450, ll 18-20*), though Manmatha Nath Chowdhury says, they joined from "Step Aside" (*Vol 11, p 280, ll 36-37*), not in my opinion such a material discrepancy as should discredit the evidence

On the other hand, there is Surendra Chandra Roy Chowdhury who says that the Sanitarium party returned the same night, and one of them brought the report to the Common Room, while the witness was still there "chit-chatting" with his friends after dinner, that the body could not be cremated "on account of excessive rain and storm" (*Vol 2, p 470, ll 19-30*) Asked about the time in cross-examination, he stated, "It might have been 10 or 11 o'clock in the night, it might have been an hour more or less" (*ibid, p 477, ll 14-15*), but the night was "much advanced" (*ibid, l 21*) He made it clear, however, that it was on the next day that he heard about the missing of the body—from Prof Benoy Kumar Sarkar (*ibid, p 471, ll 11-13 and p 474, ll 36-37*)

MIGHT STILL CREATE NO SUSPICION

Assuming, therefore, that the story of the failure of the evening cremation was known at the Sanitarium, the question still is whether the mere fact that a messenger or messengers came round to call men again the following morning and some persons actually went over and attended the morning cremation, was bound to raise any suspicion regarding death or cremation A strange occurrence like the sudden missing of a dead body from the cremation ground might undoubtedly set people asking questions about it, but there might still conceivably be circumstances present which would silence such questions In the first place, there would be at that stage no occasion for suspecting foul play Secondly, if there was heavy storm and rain that night, as is the plaintiff's case, there was the chance of the body having been blown over and hurled down the hill-side, and then retrieved by the Kumar's people after a long and laborious search and after other members of the cremation party, naturally not so interested, had left Thirdly, there would be the fact of the morning cremation itself,

carried out with due pomp and publicity, to dispel the remotest trace of any doubt that the Kumar had not been cremated. And lastly, any possible suspicion would be put out of the question by the fact that the Kumar's party quietly departed from Darjeeling the next day, apparently satisfied that they had duly performed their last duty to their deceased master and relative.

Supposing there was a *contre-temps*, if the family were satisfied who would be others to question? Principal Maitra was asked in examination-in-chief

"Q—Did you hear next morning as to how those who had gone with the body to the cremation ground had fared?"

A—I did next day, but whether in the morning or in the afternoon, I am not quite sure—probably in the morning. I heard it in front of the Superintendent's quarters at the Sanitarium" (*Vol 8, p 13, ll 1-5*)

Taking this along with his answer in cross-examination that he had no reason during his stay at Darjeeling to believe that the Kumar was not dead, it is evident that whatever the witness might have heard the next day, and however strange it might have appeared to be, it could not have been anything so unnatural or unaccountable as to excite any suspicion regarding the death of the Kumar or the genuineness of the cremation.

Weighing the pros and cons very carefully, I have no hesitation in holding that the evidence of Prof. Maitra and the other witnesses of this group remains wholly unshaken, and as I have indicated before, this evidence, if accepted, undoubtedly carries the plaintiff a long way.

CONCLUSION AS TO HOUR OF "DEATH"

To sum up my conclusion now on the question of the hour of death or supposed death of the second Kumar, I am definitely of opinion, upon a review of the entire evidence, oral and documentary, and on a consideration of the probabilities of the case, that Mr. Chaudhuri's attempt to displace the finding of the learned trial judge has totally failed, and the defendants' case that death occurred at about midnight must be held to have been completely negatived. In arriving at his finding, it will be seen the learned judge has nowhere even remotely imported the question of identity into the discussion, but has based it entirely on an independent examination of the evidence.

It is hardly necessary to emphasise once again the importance of the issue regarding the hour of death or supposed death. By showing that the event occurred in the evening the plaintiff does not necessarily destroy the defendants' case of a morning cremation, for the body might still have been taken out for cremation in the morning, but "death" at dusk is undoubtedly the touch-stone of his own case regarding the evening cremation. It is from this point of view that the defendants so strenuously insist on death at midnight as falsifying *ipso facto* the plaintiff's story of a cremation in the evening.

It is perhaps worth while recalling that the defendants' first attempt to get rid of a night cremation was by imputing death at midnight to the plaintiff himself as a part of his story. As appears from the "story of the sadhu" which was circulated with the questionnaire framed in 1921 at an

early stage of the Lindsay enquiry (*Ex 443, Vol II, pp 239-240*), the version which was then put into the mouth of the plaintiff was that of death at midnight followed by an attempted cremation during the night which was spoilt by rain and storm. The witnesses were being asked about incidents which had happened 12 years ago, and it was probably considered safer to avoid taking any risks by stirring up memory with the alternative of death at dusk as the plaintiff's case, which might conceivably lead it away from a morning cremation. The suggestion of death at midnight, on the other hand, with the attendant improbability of a cremation thereafter in the course of the night, might easily be expected to guide the memory almost involuntarily to a morning cremation as the more likely event (See the observations of the learned judge, *Vol 18, p 318, ll 1-6*)

4 ALLEGED CREMATION PROCESSION IN THE EVENING

"Death" at dusk being thus established, I may now pass on to consider the question of the evening cremation which is the next topic in the Darjeeling chapter. This necessarily involves an examination of the circumstances which are said to have occasioned a failure of that cremation. The admitted existence of a morning cremation is also a factor which it is impossible to leave out of account in dealing with this matter, but, as I have endeavoured to explain before, it does not mean that unless the plaintiff is able affirmatively to prove that the body taken out in the morning was not that of the second Kumar, his case must necessarily fail, though this will undoubtedly be the result, if the defendants on their part succeed in establishing the contrary.

ALL RELEVANT FACTORS CONSIDERED

The learned judge, in my opinion, was fully alive to the bearing on the case of the morning cremation, and I do not think that in dealing with the story of the evening cremation and its alleged sequel, he failed to weigh the plaintiff's evidence against the facts and circumstances alleged by the defendants. The acceptance of the plaintiff's story, coupled with the admitted fact of a morning cremation, no doubt carries with it the implication of a substituted dead body having been passed off as that of the second Kumar, but while the apparent absurdity or improbability involved in such an assumption is undoubtedly a factor which must be taken into account, it would still, in my judgment, be moving in a vicious circle to make this a ground for rejecting out of hand the substantive evidence on the side of the plaintiff, if it is otherwise acceptable, and accepting, on the other hand, without question the defendants' evidence, as if it must necessarily be true.

There is no inherent improbability in the story of the body being taken out to the burning ground before midnight, nor in that of a sudden burst of rain and storm dispersing the cremation party in all directions, leaving the body on the cot in which it was carried. The sequel which is said to have followed,—the missing of the body by the men when they returned after the rain and storm had subsided, and the failure to cremate the body,—is undoubtedly a strange development, of which the evidence must be subjected to close scrutiny, but it will not be right to reject it on *a priori* grounds, or because the defendants have a simpler and more natural story

of cremation to tell Incredible as this part of the plaintiff's story may seem to be on the face of it,—and the learned judge says "it sounds like a tale" (*Vol 18, p 366, l 20*),—there will still be no reason to disbelieve the witnesses who speak to it, if the evidence which they give is consistent, as it stands, and fits in with other facts independently established

The first question that requires to be considered is whether a funeral procession was taken out from "Step Aside" to the cremation ground on the evening of the 8th May,—no matter at what precise hour this was done, provided it left the house well before midnight

THEORY OF "BASHI MARA"

Mr Chaudhuri finds fault with the learned judge because before dealing with the direct evidence on the point, the latter expresses the view that if the Kumar's apparent death occurred between 7 and 8 P.M., it is almost inconceivable that the body should not have been taken out to the burning ground in the course of the night (*Vol 18, p 364, ll 11-13*). The reason which the learned judge gives in support of this is the well-known Hindu custom which forbids a delayed cremation, or *bashi mara*, as it is popularly known (*bashi* meaning stale and *marā* a corpse),— a custom which the plaintiff proves by authoritative evidence coming from a Hindu pundit versed in the shastras, P.W. 1022, Sriram Shastri, who says, quoting a text in support of his statement, that if death occurs in the course of the night, shastric injunction and usage require the body to be cremated before dawn if this is not done, the corpse (*marā*) becomes *bashi* (stale), and sin is incurred (*Vol 12, p 14, ll 3-7*). Dr Ashutosh Das Gupta, D.W. 165, also testified to this custom in a former deposition, and though he tries to go back upon it, he has still to concede it to a certain extent in his present evidence (*Vol 16, p 311, ll 17-22*). Mr Chaudhuri, however, ridicules the idea, and says that at a place like Darjeeling, even if death occurred early in the evening, not to speak of midnight, the natural and more reasonable course would be to wait till the next morning for the funeral, and he argues accordingly that the learned judge's view is wholly against probabilities.

SUPPORTED BY DEFENDANTS' OWN EVIDENCE

Mr Chaudhuri's object evidently is to destroy the plaintiff's story of an evening cremation, but he might do worse than apply the test which he is setting up to the evidence on his own side, which unmistakably goes to show that Satyendra Nath Banerjee himself sent for men for the funeral in the course of the night, though according to him death took place at midnight. This is in fact supported by the entry in his own diary under date the 8th May, to which reference has already been made more than once "Sent man to the Sanitarium for men to get the corpse removed for funeral" (*Vol 1, p 306, ll 13-14*). It cannot possibly mean that he was sending word all round to get men for a morning cremation. In his present evidence he no doubt did his best to fall into line with his learned counsel, with the suggestion that he was sending out "chits" merely to convey the news of death, and not to collect men for the actual funeral, but I have no

hesitation in saying that this was a palpable falsehood on the face of it. Here is what he said

"Q—Do you suggest you sent him (i.e., a messenger) at the time to the Sanitarium for men to come and take the corpse of the Kumar to the cremation ground?

A—No, I only sent a chit to give information—I did not want them to come at night—it depended on them" (*Vol 16, p 478, ll 26-29*)

The answer was so disingenuous that the next question which Mr Chatterjee put was perhaps inevitable

"Q—Your power of masking reality had not reached perfection when you wrote this (shown the entry)?

A—I never masked reality

Q—You did write this?

A—Yes" (*ibid, p 478, ll 30-34*)

If the witness was not "masking reality" then, somebody else must be doing so now on his behalf

Satyendra is falsified not only by his diary, but by the evidence of Rajendra Nath Sett, Tinkari Mukherjee, Shyamadas Banerjee and Durga Charan Pal,—Rajendra Nath Sett and Shyamadas Banerjee actually giving the words of the note they are supposed to have received from him "Dear Mr Sett, Kumar is no more, please come with Brahmins for the last rites" (*Vol. 1, p 301, ll 6-7*), and "Kumar expired, come with Brahmins for last rites" (*Vol 1, p 269, ll 9-10*)

There is the further evidence of another defence witness, Mahendra Nath Banerjee.

"Lall Behari Mukherjee was a fellow worker of ours. He said to me, 'Shyamadas Babu has told us that the second Kumar of Bhowal is dead and that we shall have to go to cremate him' I said 'I shall not be able to go at such a late hour of the night'" (*Vol 1, p 323, ll. 24-29*).

EVIDENCE OF KALI DAS PAL

Reference may also be made in this connection to the evidence of Kali Das Pal, a witness on behalf of the plaintiff, which Mr Chaudhuri himself accepts, except that he says that the witness was making a mistake about the time when he is supposed to have received the news of death. Kali Das Pal was an assistant in the Chief Secretary's office in the Bengal Secretariat and was staying at the Old Cutchery Building in Darjeeling. This is what he says—

"Men on behalf of the Kumar came and gave us the death report about the second Kumar and asked the Brahmins to carry the dead body to the cremation ground

"Q—What were you doing then?

A.—At that time we sat to our dinner

Q—At what time?

A—At 9 or half past 9, it would be thereabout At 9 or half past 9 at night I did not go

Q—You have stated that you did not go on their call Why did you not go?

A—All of my friends said 'It is absolutely impossible to go to the cremation ground in this hour of the night Please come tomorrow morning' " (Vol 2, p 127, ll 26-34 and p 128, ll 12-16)

Mr Chaudhuri in fact relies upon the statement made by this witness that nobody would or did go from the Cutchery Building at that late hour of the night, for the purpose of showing that the news of death had been received late It will be seen, however, that the witness makes it quite clear that Brahmans were wanted to carry the dead body to the cremation ground during the night

After all, therefore, the suggestion that if the Kumar "died" early in the evening, his body was taken out for cremation shortly thereafter, is not so absurd or preposterous, as Mr Chaudhuri would have it, forgetful of the evidence of his own witnesses An attempt would undoubtedly be made at once to collect men for the purpose, and if a funeral procession did not go out, it would be only because a sufficient number of men failed to turn up, but the evidence is all the other way

If the learned judge referred to the prejudice against "*bashu mara*", it is not to be supposed for a moment that he rested his finding on the question of the evening cremation or of its failure solely on this basis, or that, as Mr Chaudhuri would like to put it, he proceeded on the footing that given death at dusk, all else must inevitably follow Such a line of reasoning would be so obviously fallacious that the learned judge might well have been spared the accusation of having perpetrated anything so absurd or ridiculous

PLAINTIFF'S POSITIVE EVIDENCE OF EVENING PROCESSION

Mr Chaudhuri admits that there are witnesses on the plaintiff's side who speak to having attended or seen the evening procession or heard of it, but contends that the learned judge has not only not discussed this evidence on its merits, but has said that he will not do so, and he complains that the learned judge merely gives the numbers of certain witnesses, regardless of whether their evidence is purely hearsay, or whether it is mutually destructive, or whether it bears patent marks of falsehood The criticisms seem to me to have very little substance in them

There are at least seven witnesses who say they attended the procession, namely, Padmini Mohon Neogy, P W 655 (Vol 8, pp 249-255), Sitanta Kumar Bagchi (on commission) (Vol 2, pp 433-467), Kiron Chandra Mustafi, P W 941 (Vol 10, pp 383-386), Bisweswar Mukherjee, P W 944 (Vol 10, pp 394-399), Jatindra Chandra Chakraverty, P W 947 (Vol 10, pp 418-424), Manmatha Nath Chowdhury, P W 986 (Vol 11, pp 276-283), and Chandra Singh, P W 968 (Vol 11, pp 84-94) The learned judge refers to all these

witnesses in his judgment (*Vol 18, pp 364-366*), and singles out two of them for special mention, Padmini Mohon Neogy and the hill-man Chandra Singh, specially remarking on the demeanour of the former in these words. "his manner impressed me as that of a truthful man" (*ibid, p 365, ll 9-10*)—an opinion which, speaking for myself, sitting in appeal I see no reason whatever to disregard

PADMINI MOHON NEOGY

I have had occasion already to consider the evidence of Padmini Mohon Neogy, and in my judgment that evidence remains wholly unshaken by cross-examination, or by any comments which Mr Chaudhuri has advanced before us. In judging the credibility of this witness I refuse to be guided by the opinion which Satyendra chose to express about him.

"Q—Do you say Mr Neogy has perjured himself by deposing here that he went out of the "Step Aside" on the 8th evening with the procession carrying the body of the second Kumar?

A—He has most deliberately perjured himself.

I have heard he deposed in the Defamation Case to this effect falsely. I did not know that his statement was taken by an officer of the Board of Revenue.

Q—Do you suggest that he has departed from the statement he had made on that occasion? (*Objected to*)

A—I do not know. I say that his statement that information was sent of second Kumar's death to the Sanitarium on the evening is false" (*Vol 16, p 479, ll 1-12*)

ALLEGED INCONSISTENCY WITH PREVIOUS STATEMENTS

As I have shown before, his present evidence is substantially the same as in the Defamation Case in which he was a witness for the defence, otherwise, Mr Chaudhuri would most assuredly have put in his deposition under s 155 of the Indian Evidence Act for the purpose of contradicting him. The supposed discrepancy, which Mr Chaudhuri makes much of, is as regards the time when the witness had received the news of death at the Sanitarium, or reached "Step Aside", or returned from the cremation ground, but this in my opinion is not a real contradiction at all. He was asked if he remembered the timings he had mentioned on the former occasion, and he said "I do, roughly", (*Vol 8, p 250, ll 33-37*), and on it being put to him then that he had stated that he had reached "Step Aside" at about 7-30 P M, he answered "I may have, but I do not remember."

"Q—If you said so, that was correct?

A—Must be substantially correct—not counting difference of 10 or 20 minutes" (*ibid, p 251, ll 5-11*)

To a suggestion that he must have reached the cremation ground at 8-30, having regard to his evidence, that is to say, his former evidence, he replied "May be that, or a few minutes this side or that" (*ibid, ll 16-18*)

On his answers it is more than doubtful if his former statement is substantive evidence in the case. His present evidence clearly is that he received the news of death "at dusk" (*ibid*, p 249, l 27), by which he explains he means "candle light", which in May would be 7-30 or 7-45 at Darjeeling (*ibid*, p 251, ll 1-2). Mr Chaudhuri would, however, for his purpose discard these timings, and fasten on those which the witness is supposed to have given in the Defamation Case.

I should like to repeat once again, having regard to the long lapse of time after which the witnesses were deposing, that it would be wholly wrong to try and discredit them by a rigid application of the time-test, if I might so put it.

Mr Chaudhuri took the trouble to work out a time-chart on the evidence of the plaintiff's witnesses of the evening cremation, in order to bring out the conflicting nature of their statements as between themselves, or in the case of some of them, between their present and previous depositions. This chart was, however, prepared on the basis that Padmini Mohon Neogy said that he had seen the procession start from "Step Aside" at 7-30 P.M., but as pointed out above, this is not his statement now, and it would be hardly fair to pin him down to it with meticulous strictness. Taking his present evidence, the inconsistencies indicated by Mr Chaudhuri such as they are, seem to me to be of a trivial character and of little or no consequence whatever.

Padmini Mohon Neogy had also given a statement to R. C. Datta in the course of the Landsay enquiry (*Vol 8*, p 250, ll 16-20). But this was not put to him, showing clearly that it was not possible to detect even an apparent inconsistency therein. The only suggestion in cross-examination was that six days before he had made a statement to some one on behalf of the plaintiff (*ibid*, p 254, ll 33-34), which the witness admitted, except that he did not remember whether it was before or after his statement to R. C. Datta (*ibid*, p 254, ll 23-26 and l 35).

OTHER GROUNDS OF ATTACK

Another ground on which it is sought to discredit the witness is that he was not a Brahmin, but still went to the funeral (*ibid*, p 254, l 3). It will be seen, however, that he did not go unasked, like the defendant's witness, D. W. 246, T. P. Banerjee (*Vol 17*, p 347, ll 6-7), but because, as he says, the messenger who came to the Sanitarium wanted men to help at the cremation (*Vol 8*, p 249, ll 28-31). He was not a Brahmin, but understood that *bhadralogs* (respectable persons) would do, as enough Brahmins might not be available (*ibid*, p 254, ll 3-4). Mr Chaudhuri's own witness Shyamadas Banerjee admits that "if any one dies at Darjeeling, people of all classes would attend", his evidence being that he took the permission of the Financial Secretary to allow *all* clerks, and not merely the Brahmins among them, to attend the Kumar's funeral (*Vol 1*, p 256, ll 33-36). A further reason which Padmini Mohan Neogy gives for having gone to the cremation is that he "expected a grand feast, the deceased being a big man" (*Vol 8*, p 254, l 5). This appears to learned counsel to be an "extraordinary" story, but a feast to pall-bearers and others who attend a cremation at the end of the period of mourning, is a well known and established custom amongst Hindus, and it is Mr Chaudhuri's own case that Bara Kumar sent a sum of Rs 300/- to Rajendra Nath Sett at the Sanitarium for feeding the "*savan bandhus*", as such persons are called (*Vol 1*, p 303, ll 7-8). See also what his own witness Shyamadas Banerjee said: "Those who carry the dead body on their shoulders

have to be fed in this our part of the country on the 11th day after death" (*Vol 1, p 258, ll 36-38*)

The last point urged against the witness is that though he was a sub-editor of the "Bengalee", he did not send a contradiction of the obituary notice of the second Kumar which had appeared in that paper, stating midnight as the hour of death (*Ex Z (245), Vol 1, p 443*), but there is no reason to disbelieve his definite statement that he had not read that report (*Vol 8, p 252, ll 35-36*), though he did not deny that he might have been receiving a copy of the newspaper every day at Darjeeling (*ibid, p 254, ll 40-42*). He was at the time on leave, as he informed the court (*ibid, p 255, l 1*)

Like the Maitra group of witness, Padmini Mohan Neogy stated quite frankly that during the 10 or 12 days that he stayed at Darjeeling after the incident spoken to by him he had no reason to believe that the Kumar had not died or that he had not been cremated. He did not come to know of any funeral procession the next morning either, nor did he remember any condolence meeting at the Sanitarium (*ibid, p 252, ll 11-17*)

A WITNESS OF TRUTH

I have no doubt in my mind that Padmini Mohan Neogy is a witness of truth, and in my opinion his testimony alone should be sufficient to prove the fact of the evening procession. He is not a witness of the happenings at the *sasan*, of which the evidence comes from the other witnesses whom I have already named. So far as the fact of the procession is concerned, their evidence is only superfluous corroboration, as is also that of the other witnesses examined by the plaintiff, being persons who saw the procession pass or heard about it.

It is only as regards the last categories of witnesses, and not of those who accompanied the procession to the cremation ground, that the learned judge says "I do not propose to give their evidence in detail. They would not be believed if death at dusk was not a fact, and if that was a fact, there would be no reason to disbelieve them" (*Vol 18, p 366, ll 36-37*). As I understand it, this only means that the learned judge would not be prepared to accept the testimony of these witnesses for the purpose of proving death at dusk, but once that fact is established by independent evidence, as in his opinion it has been, he sees no reason to disbelieve their story about having seen or heard of a funeral procession in the evening. In other words, he accepts that story, because it is confirmed by death at dusk, which has been proved *abunde*—not that he deduces the fact of an evening cremation from death at dusk as a necessary corollary. To put the matter in another way, it is not a case of believing a witness without testing his evidence, but of accepting it only after it has passed the crucial test, namely, that of being consistent with death at dusk.

OTHER WITNESSES

The learned judge has referred to some of these witnesses in his judgment. Khan Sahib Nasiruddin Ahmad, P W 1023 (*Vol 12, pp 17-20*), Ranjit Singh, P W 940 (*Vol 10, pp 379-382*), Indra Sing Satri, P W 963 (*Vol 11, pp 49-52*), Dhanjit, P W 966 (*Vol 11, pp 61-64*), Lal Chand, P W 978 (*Vol 11,*

pp 237-240), Mahammad Ashraf Alam, P W 980 (*Vol 11, pp 246-251*), and Santa Bir Sing, P W 983 (*Vol 11, pp 259-263*) To this list might be added the names of Kedar Nath Pande, P W 981 (*Vol 11, pp 252-254*), Guriya Bhusan Roy, P W 994 (*Vol 11, pp 433-442*), and Mahammad Abdul Sattar, P W 1025 (*Vol 12, pp 24-26*)

In view of Mr Chaudhuri's criticisms, the evidence of these witnesses may be briefly adverted to

Khan Sahib Nasiruddin Ahmad (Vol 12, pp 17-20)

An old man of 70, with an annual income of Rs 5,000/- from landed properties—a man of substance for an Indian, as the learned judge says was some time a Commissioner of Darjeeling Municipality, and for long a resident of Darjeeling Heard the news of death at 7-30 P M at the bazar on his way home from the Cutchery Also saw the procession from his house in Ferndale Road at 9 or 9-30 P M, going along with cries of "*haribol*" (*p 18, ll 2-5*) Speaks about the weather "at about 10 P M rain fell, it began with wind, and later on, the wind ceased, but the rain continued" (*p 18, ll 6-7*) Elaborates in cross-examination "it was not actually raining then, but it looked as if it was going to About an hour after, the rain and wind came It was like *tufan* The wind like *tufan* continued about half an hour and then ceased, but the rain continued The rain that continued was heavy, but less heavy than before" (*p 19, ll 4-10*) Saw also another funeral procession the next morning at 8 or 9 A M and was told it was that of the Kumar

The main criticism is about the story of rain and storm said to be a tutored story to corroborate Darsan Das *alias* Gopal Das, the rescuing sadhu, P W 991, so that the wind dropping, the sadhus could hear the sounds from the supposed corpse (*Vol 11, p 382, ll 11-15 and p 400, ll 15-20*) according to Mr Chaudhuri, an apt illustration of "corroboration's crafty aid", said to be a special feature of the plaintiff's case A clever taunt no doubt, but Darsan Das needs no such aid, crafty or otherwise, for his story, for he stands on much surer ground of his own The details which are supposed to supply the corroboration are only elicited by Mr Chaudhuri himself The story as given in examination-in-chief that the rain continued after the storm had abated is not a new one, but was given by other witnesses examined before Darsan Das See, for instance, Kiron Chandra Mustafi, P W 941 "in that shed we waited for an hour, more or less, and then the rain abated and the storm was gone" (*Vol 10, p 385, ll 5-6*), Laksmi Chand, P W 979 "it was a heavy shower with high wind and lasted 1 or 1½ hours After that only slight rain continued to fall" (*Vol 11, p 243, ll 20-21*) In any case, even supposing the witness gave his story as to the wind dropping after half an hour, on being told about Darsan Das's evidence, it may well be that this evidence quite honestly led him to recollect likewise

Ranjit Singh (Vol 10, pp 379-382)

Head Clerk and Accountant of the Darjeeling Club, Ltd (Planters' Club) his father was a Police Inspector and he lived in the Police quarters just above the Railway goods shed Was a lad of 14 in 1909, and would be dancing and singing at a Children's Amusement Club in the Nripendra Narain Hindu Public Hall near the market

Remembers being coached there one evening at a rehearsal in view of an engagement at Kurseong the next day on the occasion of a sradh ceremony of the Kakina Raj, when the news of death was brought to the Hall at about 7-30 P.M. Saw the procession and heard cries of "haribol" near Chak Bazar at about 10 P.M. on his way home from the Club. Says that several Bengalee gentlemen left the Hall on receiving the news of death, of whom he remembers the name of Sanjib Lahiri speaks of heavy rain and storm that night mentions the name of the Dancing Master, Jnan Babu, who was Head Clerk of the Executive Engineer's Office, being P.W. 838, Jnanendra Nath Banerjee (Vol. 9, pp 426-431)

Apart from questioning the witness's recollection generally, the particular comment made is that he says in cross-examination that because of the previous night's rain, he found the roads wet next morning, and even the train started slowly, as the lines were slippery (p 382, ll 1-3) obviously an exaggeration, due, it may be, to the manner of putting the question to which this was an answer, but apparently considered by Mr Chaudhuri to be important enough to elicit a contradiction from a subsequent witness, P.W. 944, Bisweswar Mukherjee (Vol. 10, p 398, ll 8-9)

As for his recollecting the incident of that evening, the witness explains that it was because of its connection with the Kakina sradh, which was a "large affair" (p 380, ll 18-19 and p 381, l 15)

Did not say, nor was asked, anything about a morning cremation

Indra Shing Satri (Vol. 11, pp 49-52)

A *thikadar* who has lived all his life at Darjeeling remembers having gone to the house of Mr Kirby (wrongly printed Curvey), Contractor, one evening in May, 1909 to make up accounts with a view to make payments to mistries on the following day, which was a Sunday. On his way back from there, at about 9 P.M., he met a funeral procession at the junction of Rangit Road and *chowrasta* was told it was that of a Raja of Dacca, but he forgets the name. Followed the procession along Ferndale Road up to a road called Mudda Road or Las Road (Conservancy Road), where some men from the Sanitarium joined left the procession about one mile away from his house at Rose Bank, beyond the railway station (p 49, l 22 to p 50, l 4 and ll 38-39). Found the weather threatening at *chowrasta*, and was overtaken by rain and storm beyond the Victoria Falls, which he says by guess lasted 4 or 5 hours (p 50, ll 5-6 and ll 33-37). Speaks of a *ghora* between the old and the new *sasan* (p 50, ll 9-10), and, in cross-examination, about a narrow zigzag road from the old to the new *sasan* not wide enough for two to go abreast (p 51, ll 10-12)—now admitted to be a fact.

There is nothing to discredit the witness, and the only point in cross-examination is as to how he came to be called to give evidence for the plaintiff he admits that he was paid his travelling expenses (p 51, ll 19-36)

Dhanjit (Vol. 11, pp 61-64)

A dealer in horses and a permanent resident of Darjeeling. Speaks to having seen a procession one evening after 8 P.M. passing along

the road (Lloyd Road) as he stood near Pasan Buildings, where he had his stables

One Upen Babu, a clerk of the Municipal Office, who was in the procession, asked him to send four ponies to the cremation ground to wait at Mr Morgenstein's gate, but the ponies could not be sent on account of rain (*p* 61, *ll* 20-34)

Says in cross-examination that it started raining at 10 or 10-30 P M when he had got back home after giving orders for the ponies at the stables. The rain became heavier with a strong wind blowing as he sat down for his meal. Next morning his syces told him that the horses could not be taken to the *sasan* (*p* 62, *ll* 15-30). The Pasan Buildings had not been built then, but his stables were on the same site (*p* 63, *ll* 2-8). Saw in the procession some Bengalees and hill people, and also the "Raja's Police", who were carrying some baskets

Mr Chaudhuri points out a contradiction between this last statement and the evidence of Laksmi Chand, P W 979, who says that he saw no coolies, but only 4 or 5 hill men who were servants of the Raja, and who carried only lanterns in their hands (*Vol* 11, *p* 243, *ll* 37-39). But it is hardly of any significance. Another witness, Chandra Singh, P W 968, saw lanterns as well as a bundle being carried in the procession (*Vol* 11, *p* 90, *ll* 14-19).

Another comment is that no other witness speaks of any Upen Babu in the procession, but one Upen Babu is named by P W 994, Grijja Bhushan Roy (*Vol* 11, *p* 438, *ll* 12-13), and P W 968, Chandra Singh (*Vol* 11, *p* 93, *l* 32).

It is further pointed out that the witness places the rain at the site of the Pasan Buildings and also at the Judge's Bazar (*p* 62, *ll* 32-34), which, it is said, is impossible if the rainfall records are correct.

Says that the Babu who came to ask him to give evidence did not pay his expenses—it was *dharamkabat* (a matter of telling the truth) (*p* 63, *ll* 24-26).

This witness too says nothing about the morning cremation, nor is he asked about it.

Lal Chand (*Vol* 11, *pp* 237-240)

A betel-seller, who came to Darjeeling in 1901 at the age of 12, and for whom his father opened a *pan* shop in the Cart Road at the Chak Bazar in 1907 or 1908. Saw a procession one evening at about 9-30 or 10 P M, and was told that the corpse was that of the "Raja of Dacca". Half an hour or three quarters of an hour later heavy rain and storm broke out. Next morning at 9 or 10 A M saw again a dead body being carried along in procession, also said to be that of the "Raja of Dacca". Thought it strange, and talked about the matter (*p* 237, *l* 20 to *p* 238, *l* 9).

The cross-examination, first, was if he had been approached by Atul Roy, which he admitted (*p* 238, *ll* 26-27), Atul Roy being plaintiff's *tadbirkar*, but it is not understood how this discredits the witness, seeing that the defendants' witnesses had been similarly seen by their agents. Secondly, his memory was tested by asking

in which year the Maharaja of Cooch Behar or C R Das had died, which he could not give (p 240, ll 2-4) He could not give the year of death of the Kumar either But two processions in respect of the same person might easily fix the incident in his memory

Both this witness and plaintiff's next witness, P W 979, Laksmi Chand, say that they had known each other for 3 or 4 years (p 238, ll 31-32 and p 245, ll 5-6), but as their shops were within 100 yds of each other, Mr Chaudhuri argues, with what logic I cannot understand, that it only shows that one or the other of them must have been a recent arrival at Darjeeling, and therefore, must have been giving false evidence

Mahammad Ashraf Alam (Vol 11, pp 246-251)

A clerk in the Superintending Engineer's Office at Darjeeling and residing there since 1901 a man of Bhagalpur, having a house of his own worth Rs 8,000/- to Rs 10,000/- (p 246, ll 10-15) was living at Darjeeling just below the Railway goods shed (p 250, l 6) Remembers the Kumar of Bhowal coming to Darjeeling in 1909 Made the acquaintance of Sharif Khan, admittedly one of Kumar's staff, who went up with him to Darjeeling Saw the Kumar one day at a shop in Mount Pleasant Road, where Sharif Khan pointed out the Kumar to him was struck by his fair complexion which was like that of an Englishman Saw him again once or twice subsequently near the *chowasta* Was returning one day from the Lebong races, when coming up to "Step Aside" he heard the sound of weeping entered the house, met Sharif Khan, and heard about the Kumar's death gives the time as 7 or 7-15 P M as lights had been lit near Bhutia Bustee on his way up He scarcely came out of "Step Aside" when he was called back by Sharif Khan, who asked him to show a Bengalee Babu, who was going to the bazar, a shop where funeral requisites could be purchased Took the Babu along to the shop of Amrit Lal Ram Khelaon at Chak Bazar, where he asked the shopkeeper to supply the necessary articles took him then to Kalman Sarder's shop for purchase of firewood An hour or an hour and a quarter later, after he had got back to his house in Ferndale Road, he saw the dead body being borne along, and noticed, among others, Anukul Chatterjee, Sanjib Lahuri and Sharif Khan in the procession About an hour or three quarters after, it started raining heavily, and he retired to bed while it was still raining Did not see any procession the next morning, but heard in the evening that the Kumar's body had disappeared from the *sasan* the previous night (p. 247, l 19 to p 248, l 5)

Mr Chaudhuri attacks the evidence, first, by suggesting that he was giving a false description of Sharif Khan, who, it was said, was not a Punjabi, as stated by the witness, but a man of Gazipur (p 249, ll 11-15) The evidence of true Sharif Khan on the defendants' side comes, however, only from D W 92, Phani Bhushan Banerjee (Vol 14, p 131, ll 6-8), a witness who is so thoroughly discredited on his own testimony that I for one should refuse to place any reliance on him It is not explained why Sharif Khan could not be produced by the defendants themselves, there being no evidence that he was dead or was otherwise not available

Mr Chaudhuri next suggests that the story that as the witness was going away, Sharif Khan called him and asked where the funeral requisites could be had is "ridiculous", because he was a Mahomedan and was not likely to know what things were required. The criticism itself is ridiculous, because all that he was asked to do was to point out the shop where such things could be had. It may be that the Kumar's people had been making other purchases from these dealers from before, but that does not show that they knew that funeral requisites could also be obtained there. As the witness himself says, "he (the Bengalee Babu whom he accompanied) did not know that cremation requisites could be had in the shop from which these *saudas came*" (p 249, ll 23-25)

Mr Chaudhuri next points out that the witness saw the procession in Ferndale Road at about 8-30 P.M., which, it is said, ought to discredit him. But here again he is taking the timing much too strictly.

The last comment is that he had a talk with Atul Roy several times after the return of the Kumar, 11 or 12 years ago (p 251, ll 2-5), and yet he was not called as a witness in the Defamation Case—a comment which is repeated about several other witnesses, but is wholly futile, seeing that that was not a civil suit, the question of identity was not directly in issue and the present plaintiff was not responsible for all the proceedings on behalf of the defence.

The witness states in cross-examination that when he heard the next day about the missing of the dead body overnight, he did not think it worth while to go and enquire of Sharif Khan (p 250, ll 7-9), but he might not have had any suspicion at the time that a different body had been taken out in the second procession.

Santa Bn Shing (Vol 11, pp 259-263)

Was a Foreman under one Frostmann in 1909. Speaks to having seen and talked to *sadhus* at the Bazar, and then seen them making their way in the evening towards *sasan*. This was about 4 or 5 years before the last Great War. Heard the cry of "haribol" at 9-30 or 10 P.M. one Saturday evening, and stepping out of the house in Judge Bazar above Ferndale Road, saw a dead body being carried in a procession. Was told, the Raja of Dacca was dead. Next morning saw another funeral procession at about 8 or 9 A.M. passing along Lloyd Road. The dead body was covered. Was surprised to hear again that it was that of the Raja of Dacca. Heard 2 or 3 days later that the Raja could not be cremated at night because of storm and rain and that the body had disappeared (p 259, l 24 —p 260, l 18).

Speaks to heavy rain and *tufan* in cross-examination, which left the road in front of his house (Ferndale Road) "washed out", the market and the Cart Road were also wet (p 261, ll 5-20). Did not ask anybody how it happened that the same body was taken out for cremation a second time in the morning (p 261, ll 33-37). Admits having been seen by Atul Roy from whom he gathered he would have to depose (p 262, ll 31-33).

Kedar Nath Pande (Vol 11, pp 252-254)

A priest at the Marwari *thakurbani* at Darjeeling who used to put up at Ram Khelaon's shop (p 252, ll 11-20) Would be out for his duties in the morning from 7 or 8 A M till midday (p 253, ll 3-4) Speaks to a Bengalee Babu with two or three Hindusthanis and two or three *pahari* coolies coming along to Ram Khelaon's shop - one evening at 7-30 or 8 P M for purchase of cremation requisites About 1 or 1½ hours later, heard cry of "haribol" higher up, and going out, saw a procession with a dead body passing heard it was of the Raja of Dacca, half an hour or so after, it started drizzling, and then raining heavily with *tufan* or high wind (p 252, l 28—p 253, l 2)

His presence at Ram Khelaon's shop to witness the purchases need not have been at a "psychological moment", as Mr Chaudhuri suggests He was putting up with Ram Khelaon and might be expected to be in his shop in the evening As for the other comment that he does not mention Ashraf Alam, though he knew him for 8 or 10 years (p 254, l 6), it only shows he was not tutored, he travelled with him in the same train to Dacca (p 254, ll 8-9), and yet did not name him, because he did not know him in 1909 (p 254, l 7) He was a priest who did *pūja* for the Marwaris in the morning, and so was not finding a mere excuse for not seeing the morning procession, as Mr Chaudhuri would have it

Girija Bhusan Roy (Vol 11, pp 433-442)

His evidence will have to be considered more fully in connection with the story of rescue Speaks to having heard the news of death at about 7 or 8 P M in Nripendra Narain Hall, then seen the procession near Chak Bazar going towards the Railway godown (p 435, ll 19-30) Speaks also to rain and "a little wind too", before he went to bed (p 436, ll 1-2)

Mahammad Abdul Sattar (Vol 12, pp 24-26)

Since 1932 a Circle Officer of the Patna Court of Wards Estate, in charge of collections amounting Rs 35,000/- Came to Darjeeling at the age of 7 and lived there for 20 or 21 years with his uncle, an employee in the Deputy Commissioner's Office Got a permanent post in that office in 1903, but resigned in 1907 owing to illness Went back to Darjeeling and got employed as Manager in an Oilman's Stores shop till 1912 (p 24, ll 12-27) Not a chance witness who had come to Darjeeling only 8 or 10 days before, as Mr Chaudhuri suggests Would pass the night at the Stores in Mount Pleasant Road, but take his meals at his uncle's house in Chandmari Remembers having seen a funeral procession one evening in Lloyd's Road at about 9-30 or 9-45 P M while going for his meal Learned that the body was that of the Kumar of Dacca (p 24, ll 28-36) Speaks to heavy rain and high wind after he reached home, the wind lasting little over half an hour (p 24, l 38—p. 25, l 2) Found fault with because he corroborates Darsan Das regarding the wind dropping (p 25, ll 16-19)

Reference may also be given to the evidence of some of the witnesses who corroborate the story of the purchase of funeral requisites from the shops of Ram Khelaon and Kalman Sarder, as deposed to by Mahammad Ashraf Alam (*supra*)

Laksmi Chand, P W 979 (Vol 11, pp 241-245)

A nephew of Ram Khelaon since dead, who had a big shop at Chak Bazar in Cart Road dealing in groceries and provisions now owns a half share in the business having financed it by putting in Rs 3,000 to Rs 4,000 after his uncle's death in 1931. Also a partner in another shop which paid income-tax Rs 382/- in 1933 (p 241, ll 11-31). Remembers the coming of a big man, the "Rajkumar of Dacca" to "Step Aside" 4 or 5 years before the Great War, and getting his daily supplies of stores from Ram Khelaon's shop where the witness was then employed. Speaks to the visit one evening of Ashraf Munsı (meaning Md Ashraf Alam, P W 980), who came to the shop with a Bengalee Babu and a durwan and 2 or 3 coolies to purchase certain articles required for cremation, which he supplied (p 241, l 32—p 242, l 8). About an hour after, saw a funeral procession, which he was told was that of the Rajkumar. Speaks of heavy rain and storm about an hour thereafter (p 242, ll 9-18). Next morning he went out for payment of bills, and on returning to the shop heard a *halla* (report) about the Kumar not being cremated (p 242, ll 21-25). Speaks of the old *sasan* being in use as well as the new, as the way to the new *sasan* was very bad and jungly before a new road was built about 20 or 22 years ago (p 242, ll 35-40). Has seen *sannyasis* at Darjeeling who would be fed by his uncle (p 243, ll 1-8).

Mr Chaudhuri questions his recollection, but if his evidence is true and there was a *halla* the next morning, as he says, he was likely to remember.

A point is made about this witness and another, P W 964, Durgaprasad Baishy, also an employee of Ram Khelaon's shop (Vol 11, p 55, ll 20-22), that they purposely keep themselves away in the morning lest they might have to speak to the purchase of materials for the day cremation. There is no reason, however, why they should avoid facing any questions about it, seeing that the plaintiff's own witness, Ram Sing Subha, had already stated in examination-in-chief that he had procured fuel from Kalman Sarder's shop and *ghee* from Ram Khelaon's for this cremation (Vol 11, p 66, ll 38-39). It may well be that this purchase of fresh materials in the morning was one of the reasons which led to the *halla* about the failure of the night cremation.

Bhakatbn Roy, P W 988 (Vol 11, pp 292-294)

An old man of 73, who has lived all his life at Darjeeling was an employee in Kalman Sarder's shop from which firewood was purchased for the evening cremation. Gives the time when a Bengalee Babu with three others came for the fuel as 8 or 8-30 P M, and the year as 1908 or 1909 (p 292, ll 11-28). Speaks to heavy rain at about 10 P M (p 292, ll 33-35). Cannot speak without looking up his books of any other big man for whose cremation he supplied fuel (p 293, ll 35-36). Was in the shop the next morning from 6 A M, as stated in examination-in-chief (p 292, ll 36-37), but still not cross-examined at all about the purchase of fuel for the morning cremation. Found the roads wet and worn out in the morning and some *chhapra* roofs lifted up in some houses (p 293, ll 37-39).

Jang Bir Sinha Karky (on commission) (Vol 11, pp 314-317)

A son of Kalman Sarder since deceased, and an assistant in the Deputy Commissioner's office at Darjeeling was a lad of 14 or 15 years in 1909, and says that he 'was in the shop reading when some people came to buy firewood for the Kumar's funeral in early May that year (p 314, ll 9-36) Did not see any evening procession, but saw one the next morning, which surprised him very much, because the firewood had been taken the previous evening and the body was being taken the next day (p 315, ll 4-14)

The suggestion in cross-examination is that he is one of the group of witnesses who had been procured by Basanta Kumar Mukherjee, P W 823 (Vol 9, pp 383-388), Superintendent in the Deputy Commissioner's Office, Darjeeling

Bhanga Routh (on commission) (Vol 11, pp 334-337)

A *chaprasi* (peon) in the Criminal Court at Darjeeling Speaks to having seen a few coolies bringing firewood to the new *sasan* one evening at about 9-30 P M Had gone there himself with two others in the company of a *sadhubaba*, who was living at the time by the side of the High School above Was told by one of the coolies that the fuel was for the cremation of the Raja of Dacca Shortly after saw a funeral procession approaching, but as it appeared to stop at the old *sasan*, the coolies proceeded with the wood in that direction he and his friends left as it began to rain, and passed the coolies near the *jhora* between the old and the new *sasan* when heavy rain and storm came Near the old *sasan* saw people running away towards the north, lanterns in hand Took shelter in a *mali's* room in the High School compound until the rain abated (p 334, l 10 to p 335, l 12)

The evidence, it is said, should be washed out because he says that he joined his service in 1906 (p 334, ll 10-11), and later in examination-in-chief says "he went to the cremation ground 2 or 3 years before, and not after, he joined service" (p 335, ll 14-15) He was evidently confused, for on the question being repeated "was it before or after you entered into the service?", he answered "it seems to me it was in the year 1909" (p 335, ll 16-18) He is also sought to be discredited as being one of Basanta Kumar Mukherjee's group of witnesses.

If the plaintiff was minded to make a false case, he might easily have sent the cremation articles to the old *sasan*

Apart from these witnesses, there is, as I have already indicated, also the evidence of persons who accompanied the procession to the cremation ground But there can be no doubt that the body of evidence which I have set out, if accepted, fully establishes the fact of the procession Eliminating hearsay, the account which these witnesses give as to having seen the procession is consistent, and not mutually destructive, nor does the cross-examination seem to me to bring out any palpable marks of falsehood

STORY OF RAIN AND STORM

Mr Chaudhuri, however, makes two comments of a general character, which in his opinion tend to discredit the evidence of these witnesses as also

of those of the evening cremation itself. One is that they make out a story of heavy rain on the night of the 8th May spread over a wide area all along the Cart Road and both above and below it, of rain at the Bazar, at Chandmari, in Ferndale Road, at the Sanitarium, and in the Bloomfield Tea Estate, down the way to Ghoom, but none of the rainfall records on which the defendants rely show any rain at Darjeeling on or about the 8th. It is pointed out that if there was such extensive rain, as is spoken to by these witnesses, it could not have escaped being recorded at St Joseph's College or at St Paul's, if not in the two disputed registers kept at the Municipal Office and the Botanical Gardens. These rainfall records undoubtedly require consideration, and it will have to be seen how far they can be relied on or held to prevail against the positive testimony of the plaintiff's witnesses.

The second criticism is that most of the witnesses who were called to speak to the evening procession or the evening cremation had not been mentioned by the plaintiff at any earlier stage, which Mr Chaudhuri considers very strange, specially, as he says, there had been at least three investigations into the matter on behalf of the plaintiff prior to the suit, the first by a pleader named Mr Surendra Nath Mukherjee in May or June 1921, the second in the Defamation Case of 1922, and the third in 1925 and 1926 by Mr Dwarka Nath Chakravarti, an eminent vakil of the Calcutta High Court, who for some time acted as one of its judges. The suggestion is that the witnesses were afterwards improperly procured, though there is no trace of any such suggestion put to them in cross-examination.

THREE PREVIOUS ENQUIRIES

As regards the enquiry by Mr Surendra Nath Mukherjee, whom Mr Chaudhuri has been pleased to describe as the "father" of the plaintiff's case, there is no evidence on the record of the nature or extent of it. All that learned counsel is in a position to rely on is a statement contained in a letter of Ram Satyabhama Devi to J. G. Drummond, the then Collector of Dacca, dated 29th July 1922, in which she says

"Babu Surendra Nath Mukherjee, B.L., an educated and respectable gentleman of Dacca had gone to Darjeeling and made enquiries about the alleged cremation, and his impression is that the body of my second grandson, Kumar Ramendra Narain Roy, was never cremated" (Ex 274), (Vol II, p 429, ll 9-12)

The enquiries, such as were made at that stage, could not obviously have been exhaustive, nor could they have been made in view of any civil suit.

As regards the Defamation Case, it is pointed out from Ex J, the plaintiff's memorial to the Board of Revenue of the 8th December, 1926, that it was sought to prove in that trial that the body of the Kumar was taken to the cremation ground at about 9 P.M. on the 8th May (Vol III, p 98, ll 3-6), but that only two witnesses were examined who said that they had attended the cremation, Padmuni Mohon Neogy and Joges Chandra Roy, while a third, Surendra Chandra Roy Chowdhury, was called to prove the coming of a messenger to the Sanitarium at dusk to collect men for the funeral, and the return of the Sanitarium party from the *sasan* that very night at about 10 P.M. with the report that the body could not be cremated owing to rain and storm (*ibid*, p 98, l 29—p 99, l 11). Thus, in my opinion, cannot rule out the possibility of other witnesses equally competent to give evidence on the point, though not examined in that case. The Defamation Case was not

being tried out on the same scale as the present suit, and it may also well be that all available witnesses had not been or could not have been ascertained at that stage. Further, it would be wrong in any case to identify the plaintiff with the defence in that trial and make him responsible for all its proceedings, merely because the defence received some assistance from his party.

As to the enquiry by Mr Dwarka Nath Chakravarti, Mr Chaudhuri relies on the statement in the annexure to the memorial, *Ex J*, in which this gentleman is said to have held "a thorough enquiry into the matter extending over two years", and examined a number of persons including those who attended the funeral (*Vol III*, p 106, ll 17-25). In the list of such persons appended to the memorial there occur the names of only two of the evening cremation witnesses examined in this case, Surendra Nath Roy Chowdhury (*ibid*, p 111, item No 55) and Padmini Mohon Neogy (*ibid*, p 112, item No 39), and of another person cited but not examined, Sanjib Chandra Lahiri (*ibid*, p 112, item No 28). There is nothing to show, however, that the memorial purported to give an exhaustive list of the persons known to the plaintiff to have gone to the evening cremation or heard about it, or of such persons who had been examined by Mr Dwarka Nath Chakravarti. It is futile, therefore, to ask the court to draw an adverse inference against any of the plaintiff's witnesses from the non-mention of their names in the memorial.

SUGGESTION OF PROCURING FALSE EVIDENCE

Mr Chaudhuri next points out that in the lists of witnesses filed by the plaintiff in the earlier stages of the case in 1930-31 and later, only three names were mentioned—Padmini Mohon Neogy, Joges Chandra Roy and Sanjib Chandra Lahiri, of whom only the first was called, and not the names of the other witnesses who were actually examined in connection with the evening cremation, and he elaborates his point by referring to the manner in which these witnesses came to be produced in the course of the trial.

Sitanta Kumar Bagchi was the first of such witnesses, examined on commission on the 26th June, 1932 (*Vol 2*, p 433), and then came Padmini Mohon Neogy, P W 655, who deposed in court two years later on the 27th June, 1934 (*Vol 8*, p 249), merely proving the procession up to its arrival at the *sasan*.

Evidence as to the happenings at the cremation ground began again with Kiron Chandra Mustafi, P W 941, called on the 26th September, 1934 (*Vol 10*, p 383), who said that he had been approached for the first time to depose in the case only 20 or 25 days before (*ibid*, p 385, l 32). He gave the names of only two persons in the procession—Nanda Master and Bishu alias Bisweswar, he did not know if the former was still living, but the latter had come to Dacca with him (*ibid*, p 383, ll 37-41).

This Bishu or Bisweswar Mukherji, P W 944, was examined the next day, and said that he had been served with summons at Dacca, and been approached by the plaintiff's agent, Atul Roy, about two months ago (*Vol 10*, p 398, ll 13-17). Among the persons who attended the cremation he mentioned Kiron Mustafi (already examined), Sanjib Lahiri (already cited, though not called), and a boy named Suren Maitra, besides Nanda Master (referred to by Kiron Mustafi) (*ibid*, p 395, ll 7-8, 11 and 20-22). He admits having discussed the points of his evidence with Kiron Mustafi at Dacca (*ibid*, p 398, ll 17-19).

The next witness to follow was Jatindra Chandra Chakravarti, P W 947, called on the 3rd October, 1934. He mentioned the names of his elder brother, Basanta Kumar Chakravarti, Anukul Chatterji, Sasi Babu alias Sasi Bhusan Bhattacharji and Fakir Chandra Ray, as well as of Sitanta Kumar Bagchi and Sanjib Lahiri as being among the persons who went to the cremation ground (*Vol 10, p 419, ll 19-20, 23-24 and 36, and p 420, l 13*). He said he had seen the plaintiff some 20 days before, and given a statement to the plaintiff's lawyers three or four days previously. He had not mentioned the fact of his having gone to the cremation to anybody except to the inmates of his house, because he "dared not talk about matters offending a Raja", as he put it (*ibid, p 422, ll 25-31*).

The next witness was Chandra Singh, P W 968, not supposed to have been mentioned by anyone previously. He was called on the 28th November, 1934, that is to say, about two or three weeks after the court reopened at the end of the Puja vacation which commenced that year on the 6th October. He named only Kiron Mustafi as one of the cremation party (*Vol 11, p 91, l 9*), and said that he had been asked by Dr Upen Bose of Kalimpong to come and depose in August or September, but could not do so as he was ill before that nobody had spoken to him on behalf of the plaintiff (*ibid, p 93, ll 32-39*).

The last witness called was Manmatha Nath Chowdhuri, P W 986, examined on the 19th December, 1934, who, again, it is said, had not been named at an earlier stage. He mentioned Bishu Babu (Bisweswar Mukherji, P W 944), Sanjib Lahiri and Jatindra Chakravarti, P W 947, as having gone to the cremation ground (*Vol 11, p 277, ll 3-5*), as also Dhiren Mitra and Nripen Chatterji, though he was not sure about these two (*ibid, ll 9-11*). He stated that after the last Pujas he had a talk with one Atul Guha, who on hearing what he knew said that he was a pleader for the Bhowal Kumar and asked him to depose (*ibid, p 283, ll 20-24*).

As regards the witnesses named by the learned judge who merely saw the evening procession, only one Ranjit Singh, P W 940, was called before the Pujah vacation, namely, on the 26th September, 1934 (*Vol 10, p 379*), the others being examined on different dates between the 26th November, 1934, and the 31st January, 1935 (*P W 's 963, 966, 978, 980, 983 and 1023*).

NO PROCURING OF FALSE EVIDENCE

Mr Chaudhuri's argument from these facts amounts to saying that these witnesses should have been all available to the plaintiff from the outset, and as they were not, the irresistible inference must be that they all came to perjure themselves in the interest of the plaintiff, irrespective of the intrinsic character of the evidence they gave. Frankly, I am not much impressed by this argument, as in my opinion the fact of the plaintiff not having been able to trace out these witnesses or ascertain their names until a late stage in the case is not after all such an improbability that it must be regarded with suspicion. It might perhaps have been a matter for legitimate comment, if having known about these witnesses from before, the plaintiff was still keeping them back from the court, till he could shape the evidence according to the exigencies of his case as they manifested themselves during the progress of the trial, but there is no foundation for any such assumption. Mr Chaudhuri went the length of suggesting that the witnesses began to flow in on an indication of the court's "favourable atmosphere",—which I consider to be a most unmerited attack on the learned judge.

Judging from the plaintiff's conduct in the case, I am fully satisfied that he was no more trying to procure false evidence of the evening cremation than he intended to suppress available evidence from the court

It will be seen that quite early in the case the plaintiff through his witness Sitanta Kumar Bagchi had committed himself to a list of at least ten persons said to have been present at the evening cremation (*Vol 2, p 444, ll 13-15, p. 446, ll 20-23 and p 455, ll 12-15*), which he would not have done, if he was out to make a false case. Of these, only three were dead, namely, Shamapada Haldar, Satis Chandra Roy and Kishori Mohan Biswas (*ibid, p 444, ll 15-17*). Of the remaining seven, the plaintiff had cited Sanjib Chandra Lahiri, but did not call him, he had also cited Fakir Chandra Roy by a petition filed on the 26th February, 1931 (*not printed*), but this witness was got hold of by the defence to give a statement to a Magistrate on the 19th September, 1932 (*Ex Z (364), Vol II, pp 268-269*), and thereafter to give evidence on commission on their behalf on the 16th October, 1932 (*Vol 3, pp 1-15*), which by the way illustrates the forces at work the plaintiff had to contend with. He is also said to have cited Ram Das (Railway Guard), whose full name Sitanta Kumar Bagchi was unable to give (*Vol 2, p 446, l 28*), but who, according to Mr Chaudhuri, is the same man as Mohini Bhattacharjee examined in the Defamation Case. Among the rest, the witness himself was one, and the other three were Sashi Bhushan Bhattacharjee, Bijoy Chakravarti and Satis Babu (Clerk, Gymkhana, Darjeeling), the first named being also mentioned by Jatindra Chandra Chakravarty (*Vol 10, p 419, ll 23-24*), but neither of these persons appears to have been cited or called by the plaintiff. This clearly shows that the plaintiff was not going to conceal any names merely because he was not in a position to produce the witnesses, even his last cremation witness, Manmatha Nath Chowdhury, P W 986, named two persons who were not examined.

It should be clear now that when the learned judge, referring to the witnesses of the evening procession, said that he did not propose to give their evidence in detail, it was not because of any fear that their evidence would not stand the test of scrutiny. It is wholly wrong to say, as Mr Chaudhuri wanted to do, that he merely numbered the witnesses and did not weigh them. The learned judge believed them, and I hold that he had good reasons for doing so, but for the purpose of proving the mere fact of the procession, it would probably have been quite enough for the plaintiff to rely on the evidence of Padmini Mohon Neogy alone, coupled with that of the Maitra group and the other evidence given in support of death at dusk.

SEQUEL TO EVENING PROCESSION

Death at dusk and an evening procession starting thereafter at about 9 P M from "Step Aside" being thus established, the next question to be considered is one relating to the sequel to that procession.

Was the body cremated?

Given these two facts, and given also the admitted fact of a morning cremation, the answer to this question ought not to present any difficulty. To my mind it must follow almost with logical certainty that the evening cremation proved infructuous, whether the body taken out in the morning

was or was not the same as had been carried to the cremation ground the previous evening. If it was, the body must have been taken back to "Step Aside" in the course of the night, but it is agreed that this is not the case of either side. The only other alternative must, therefore, be that the next morning's cremation was carried out with another body, howsoever it might have been procured. As to this, admittedly there is no affirmative evidence on the plaintiff's side that it was not the body of the second Kumar, but there is positive testimony of the defendants to the contrary.

SUPPOSED IMPROBABILITY OF SUBSTITUTED BODY INVOLVED IN PLAINTIFF'S STORY

Mr Chaudhuri's argument is that because the plaintiff's case of death at dusk and an evening procession, coupled with the admitted cremation the next morning, thus involves as a necessary consequence such an extreme improbability, amounting almost to an impossibility, as that of the defendants having been able to obtain another body overnight for the morning cremation, the whole of the plaintiff's story must be rejected on this very ground.

I am not at all sure that this is not arguing in a circle. The improbability is undoubtedly there, but it is occasioned only by the plaintiff's admission of the morning cremation, and the very fact that he is prepared to face it by making this admission is by itself a circumstance which in my opinion tells very strongly in his favour. If the plaintiff's case was not true, is it at all probable that he should have taken upon himself this unnecessary burden by admitting the morning cremation? It should be emphasised that a morning cremation with a substituted body is no part of his substantive case, and he does not rely on it for the purpose of proving the failure of the evening attempt, which in fact he seeks to establish by direct and independent evidence of the happenings at the *sasan*. It should only serve to confirm the truthful character of such evidence that it entirely harmonises with the conclusion which otherwise follows from the very fact of two successive funerals purporting to be of the same person.

PLAINTIFF'S ADMISSION OF MORNING CREMATION WHAT IT MEANS

As I have indicated before, the admitted existence of the morning cremation is certainly a factor which cannot be left out in coming to a decision on the plaintiff's case of an evening cremation, but it only implies that if the morning cremation really related to the body of the second Kumar, then and then only would it destroy the plaintiff's evidence as to the evening cremation. I do not agree with Mr Chaudhuri that the mere admission of the plaintiff that there was a morning cremation is a fact going directly against the possibility of his case, on the other hand, as I have tried to show, this only goes to strengthen and confirm it. To say that the morning cremation must be considered along with the evening cremation to come to a conclusion can mean no more than this that the evidence in support of the one must be weighed against that regarding the other, not that there is any initial presumption in favour of the defendants' story of a morning cremation, which must necessarily stand, if not rebutted by positive evidence on the plaintiff's side showing that the body then taken out was not that of the

Kumar To all visible appearances the morning cremation no doubt purported to be that of the Kumar, and was generally understood to be so, in other words, it was "apparently real", as Mr Chaudhuri put it, but it does not follow *ipso facto* that what had the appearance of reality must have been the reality, merely because the plaintiff is unable to give affirmative evidence that it was not in fact real. The plaintiff in my opinion will have fully discharged the onus of proof that lies on him, by showing that the Kumar's body was taken out for cremation in the evening, but could not be cremated, and once this is proved, it should be for the defendants to displace it by positive evidence on their side. In other words, the true position as it strikes me is that if the defendants can satisfy the court by their evidence about the cremation of the real Kumar in the morning, then and then only will they have negatived the case of the plaintiff. Mr Chaudhuri says, you cannot first find the evening cremation and then displace the morning cremation by it, but by parity of reasoning, you cannot first find the morning cremation or assume it to be a fact and on that ground seek to destroy the evening cremation. In point of fact, the learned judge, as was only to be expected of him, has dealt with the defendants' evidence of the morning cremation on its own merits, as if death at dusk or the failure of the evening cremation had not been found at all (*Vol 18, p 377, ll 23-28*). The fallacy in Mr Chaudhuri's argument lies in the assumption that what the plaintiff admits to be only "apparently real" is an admission of the reality itself, and that, the "apparently real" must be taken as real, unless the party admitting it proves or explains why it should not be accepted as such.

NOT AN INTEGRAL PART OF PLAINTIFF'S CASE

Mr Chaudhuri tried to put his proposition in a simple form thus "if you say that the body taken out in the morning was the body of the Kumar, and do not give evidence that it was not the body of the Kumar, my evidence remains", but such a conclusion is doubly wrong—first, because of the wrong premises on which it is based, for, the plaintiff has never said that the Kumar's body was taken out in the morning, and secondly, because it assumes a morning cremation with another body as an integral part of the plaintiff's case the burden of proving which lies on him.

Mr Chaudhuri evidently set great store by this particular argument which he was never tired of repeating before us, but a little examination will show that it betrays a confusion of ideas. What are the respective cases of the parties in the pleadings? In the plaint there is no reference whatever to any morning cremation, in paragraph 2 where the Darjeeling part of his case is set out, the plaintiff merely avers that he (meaning the second Kumar) was taken for dead and carried to the cremation ground, on the night of the 8th May, but that owing to severe rain and storm the persons who carried the body ran away from the *sasan*, leaving it there, and that as on returning later, they missed the body and were unable to find it out, they went away without cremating it (*Vol 1, p 120*). In answer to this, the defendants assert in paragraph 14 of their written statement that the Kumar having died at about midnight, it was not possible to make necessary arrangements for his cremation at night, and that the next morning his body was taken out in procession and duly cremated (*ibid, p 174*). In this state of the pleadings, it seems to be quite plain that all that the plaintiff has to do is to prove the fact of an attempted cremation in the evening which turned out infructuous, while the defendants on their part are called upon to establish

the morning cremation alleged by them, which means their proving not only that a funeral procession left "Step Aside" in the morning, but that it left with the body of the second Kumar which was afterwards cremated in due course

It is a fact that at the trial the plaintiff led evidence to show that there was a cremation procession from "Step Aside" in the morning, but all that was said about the body which was taken along in it was that it purported to be that of the second Kumar, not that it was his,—the first witness to speak to this, if I am not mistaken, being Jadu Lal Mullick, P W 113 (*Vol 5, pp 97-98*), and then Swami Onkarananda, P W 603 (*Vol 8, pp 93-100*) among others. All this evidence, therefore, amounts to no more than an admission of the fact of a morning cremation. It was definitely not an admission that it related to the body of the real Kumar.

ONUS ON DEFENDANTS

A party to a suit is undoubtedly entitled to take advantage of an admission made by his opponent, but it is elementary law that he may do so only to the extent to which it goes. It follows accordingly that by reason of the evidence given on the plaintiff's side, the defendants in proving their substantive case in answer to his are merely relieved of the burden of adducing evidence of their own regarding the factum of the morning cremation. The burden of proving that the body was that of the Kumar will still be on them, and in my opinion they cannot hold themselves discharged from it merely because the plaintiff is not in a position to establish affirmatively the negative of their case. The plaintiff's evidence cannot be taken even as going near the fact of the Kumar's body having been taken out for the morning cremation, for it not only stops short of this, but definitely points contrari-wise.

Supposing the plaintiff proved the evening cremation and its failure, and no further, and no evidence was given on either side regarding the morning cremation, would his case about the non-cremation of the Kumar fail? Assuredly not. How, then, could it be argued, merely because the plaintiff gave some evidence of a morning cremation, that the burden was shifted on to him to prove that the body taken out for that cremation was not that of the second Kumar?

Under s 104 of the Indian Evidence Act, it might be said that if there were any other facts which were necessary to be proved in order to establish the evening cremation or its abortive sequel, the onus of proving such facts would be on the plaintiff, but to my mind it is not possible to contend with any semblance of reason that a morning funeral with a substituted body is such a fact. As I have already pointed out more than once, this is not a part of the plaintiff's substantive case as set out in his plaint, and even though he has led evidence about a morning cremation, he does not rely on it at all to establish the case he has made, which he in fact proves by other evidence regarding the incidents which happened at the cremation ground on the night of the 8th May.

DEFENCE ARGUMENT A PIECE OF SOPHISTRY

With all respect, the whole of Mr Chaudhuri's argument is a piece of finely wrought sophistry which fails to carry conviction. His next proposition

he thus formulates "if you keep the two cremations in separate compartments and contrast the one version with the other, you will have to decide on the preponderance of probability", and he proceeds to say that on this question of probability, if the two cases are evenly balanced, the court should decide in favour of the defendants. But it seems to me that the question really reduces itself to one of balancing the evidence on the one side against that on the other, in which probability is no doubt an element to be taken into account. On the other hand, the very improbability of the plaintiff's story,—indeed too fantastic for invention,—may be regarded as a factor telling strongly in its favour.

PROBABILITIES CONSIDERED

An important circumstance which it is impossible to overlook in this connection is that this story in its essential features—that of rain and storm dispersing the attendants in all directions and their missing the body upon their return to the spot where they had left it, as also of its subsequent rescue by a party of sadhus—did not take its rise for the first time for the purposes of the suit, or only upon the advent of the plaintiff at Jaidebpur even if the plaintiff's evidence of rumours to this effect having been current from after the return of the Kumar's party from Darjeeling be discarded, the defendants cannot deny that there was such a rumour in 1917, as shown by Rani Satyabhama's letter to the Maharajahdhiraj of Burdwan dated the 3rd September of that year (*Ex Z(33)*, Vol II, p 175)—not that the prevalence of a rumour is evidence of the truth of its contents, or that the rumour establishes the truth of the plaintiff's case. The fact remains that the defendants are unable to give a satisfactory explanation of the origin of this rumour of 1917, beyond making a suggestion that it was the offspring of the disordered imagination of Akhoy Roy (*Bevin Khansama*, Vol 14, p 494, ll 3-8, and *Rai Saheb Jogendra Nath Banerjee*, Vol 15, p 444, l 35—p 445, l 3) it is not shown that the plaintiff or any possible fore-runners of his had had anything to do with it. Supposing, however, in favour of the defendants that this rumour furnished a background for the manufacture of the story with which the plaintiff came to court, the plaintiff, if his story was false, would still require for its support a fortuitous concurrence of circumstances which it is difficult to imagine one could secure by sheer chance,—one, for instance, being the existence of two *sasans* in use at the time in question, the new with a shed over it, but the old with none.

If probabilities are to be taken into account, these are facts which cannot be altogether eliminated. But be that as it may, it should not be forgotten that this is an appeal, and the burden of showing that the judgment appealed from is wrong lies upon the appellant, and to quote the words used by Lord Buckmaster in delivering the judgment of the Judicial Committee in *Nabakishore Mandal v Upendra Kishore Mandal*, (1921) 26 C W N 322, s c, 35 C L J 116, "if all he can show is nicely balanced calculations which lead to the equal possibility of the judgment on either the one side or the other being right, he has not succeeded."

PLAINTIFF'S EVIDENCE AS TO MISSING OF BODY

The plaintiff's evidence regarding the events which happened at the cremation ground on the night of the 8th May resulting in the return of the funeral party without burning the body may be now briefly referred to the

learned judge has given a very correct and succinct summary of it (*Vol 18, p 366, ll 4-19*) It is not to be supposed for a moment that this evidence, if accepted, will carry the plaintiff the whole way on the Darjeeling part of his case, for the failure of the evening cremation would not necessarily show that the body which was taken to the *sasan* was still alive Even if life had not been extinct at the time the body was missed, it might still have perished thereafter, though it had escaped the funeral pyre as the learned judge himself puts it, the fact that the body was left at the *sasan* during the rain and storm and disappeared is no proof that it was alive (*ibid, p 394, ll 10-12*)

The disappearance of the body from the cremation ground is, however, a fact which has to be first established, and to this end, as stated above, the plaintiff has adduced substantive evidence which has now to be considered

The body of direct evidence on the point comes from at least half a dozen witnesses, whose names have been already given and who all deposed in court with one exception, namely, Sitanta Kumar Bagchi, examined on commission more than a year before the commencement of the trial (*Vol 2, p 433*) The learned judge having seen and heard the witnesses has definitely accepted their testimony (*Vol 18, p 376, l 19*), though, as he says, the account they give, however consistent, sounds like a tale (*ibid, p 366, l 20*), which shows that he examined the evidence on the footing that the story was of a most unusual character He has also fully taken into account all the facts and circumstances which the defendants urged as tending to discredit the story

It should be difficult, therefore, to interfere with the finding arrived at by the trial court mainly on verbal testimony given in court, unless on a full consideration of all the material, it is shown to be "clearly wrong", to use the language of the Judicial Committee in *Pir Ahsanullah Shah v Pir Ziauddin Shah*, (1937) 41 C W N 624

It does not in my opinion detract from the weight of that finding that the learned judge has not specifically discussed the evidence of each of the witnesses, as Mr Chaudhuri says he should have done This was hardly necessary, seeing that the testimony they gave was consistent and not contradictory in any material particular, and was assailed on certain common grounds each of which the learned judge considered at length

SITANTA KUMAR BAGCHI

To take first the evidence of Sitanta Kumar Bagchi, he was the earliest witness of the plaintiff regarding the evening cremation, examined on commission on the 26th and 27th June, 1932 (*Vol 2, pp 433-467*), and leaving aside discrepancies on non-essential points which seem to me only to confirm the truthfulness of his testimony, the story he gives corresponds in substantial details to the evidence of the other witnesses who deposed in court

He was employed as a probationer at the Darjeeling Head Post Office in May, 1909 and was putting up in the Postal Mess which was near the Post Office, along with 6 or 7 other postal employees whose names he gives (*ibid, p 441, ll 25-33*) He heard the news of the second Kumar's death at the Mall at about 8-30 P M from one of his fellow-boarders who reported that a gentleman had come to their Mess to ask for men to carry the dead body to the *sasan* He did not remember who gave him the news (*ibid, p 444, ll 8-29*), but apparently he got it from one Aswini Kumar Sen, P W 672 (*Vol 8, pp 423-425*),

who, it may be added, says he saw the morning procession the next day near one Kartik Babu's clock shop on his way back from Jalapahar where he had gone the previous evening on an invitation to dinner at the house of the Palace Superintendent of the Raja of Dighapatia. Mr Chaudhuri is wrong in saying that Aswini Kumar Sen is not mentioned by the witness—he is in fact one of the 16 postal clerks whom he names (*Vol 2, p 440, l 28*). On getting the news the witness hastened back to his quarters, had his meal, and then at about 9 or 9-15 P.M., proceeded to "Step Aside" with two of his friends. They met the procession as it was emerging from the house, and accompanied it to the cremation ground. It had started raining on the way, but the rain became heavier and was attended with storm after the procession reached the *sasan*. They waited there for half an hour, but unable to bear the rain any longer, ran away for shelter which they found in a small tin shed more than a mile off, leaving the body at the spot where they had put it down. More than half amongst them left for their homes, but those that remained returned to the cremation ground after the lapse of over an hour when the rains had abated a little. They were looking out for a suitable place for the funeral pyre, when a cry was raised that the body of the Kumar had disappeared. A thorough search was made with the help of lanterns, but the body could not be found, and the witness with his mess-mates and several others came back home, heavily drenched in the rain (*ibid, pp 433-437*).

The cross-examination was first directed to show that he was not employed at the Post Office at the time, but he remained wholly unshaken (*ibid, pp 440-441*). It was then sought to fix him regarding time, apparently in view of Padmini Mohon Neogy's statement which he is said to have given in the Defamation Case, to the effect that the funeral procession had left "Step Aside" shortly after 7-30 P.M. (*Vol 8, p 251, ll 5-7*). He was asked how long it took to go from the Postal Mess to "Step Aside" and from "Step Aside" to the cremation ground (*Vol 2, p 442, l 23—p 443, l 5*), or when he got back to his mess (*ibid, p 460, ll 12-15*). Questions were also put to him about the men whom he had seen in the procession, and he gave 10 names which he could remember (*ibid, p 455, ll 12-16*),—a point I have already dealt with. Some inconsequential questions were also asked as to whether the dead body was tied to the bier or not, or there was any bedding on it, or whether the dead body was wrapped up with the bedding, or the bedding was on one side and the body on the other (*ibid, p 447, ll 24-34*), the object presumably being to test him by what Ram Sing Subha is supposed to have said in the Defamation Case (*Vol 11, p 77, ll 1-24*).

SUPPOSED NEW CASE REGARDING SASAN

The witness, again, was cross-examined about the cremation ground, which he said was situated below Chandmari and on the Tista and at the end of the Victoria Falls, which sprang out from Kagjhora (*Vol 2, p 436, ll 2-4*). Mr Chaudhuri made a great point that in cross-examination he stated that there was no fixed place for cremation at all, but that cremations used to be held wherever water was available from the waterfall (*ibid, p 451, ll 18-19 and 30-31*). This, it was suggested, was a new and a false case which the plaintiff was making through the witness for finding some ostensible ground why the cremation party should not have gone to the new *sasan*, which had already been in use since August 1907, with a shed over it where they could easily have found shelter against the inclemencies of the weather. It was said that the first case made by the plaintiff was that there was no shed in either

cremation ground, so that there would be no particular reason for preferring the new to the old *sasan*, which was in fact much nearer, but that, as this case was demolished by the defendants proving that there was a shelter, as also a covered pyre, at the new *sasan*, the plaintiff had to find some other excuse for avoiding this ground, and this he did through Sitanta Kumar Bagchi.

It will be seen, in the first place, that the supposed new case imputed to the witness was not made by him in examination-in-chief, but elicited in cross-examination. Secondly, he was the first witness on the plaintiff's side regarding the evening cremation, and there was no question of the plaintiff making any case about the cremation ground at an earlier stage. The only basis for Mr Chaudhuri's suggestion seems to be a statement in cross-examination by the defendants' earliest witness of the morning cremation, Shyamadas Banerjee, examined on commission more than a year before Sitanta Kumar Bagchi, which is supposed to give an indication of the plaintiff's case, and was to this effect: "This is not true that in the month of May, 1909 there was neither any tin shed at that place, nor was there any spring" (*Vol 1, p 260, ll 3-5*). It is not at all clear that the question to which this was an answer was not directed merely to elicit from the witness something which might show the existence of a *sasan* where there was no shed in May, 1909, the shed at the old site having been dismantled some time after May, 1907 (*Ex 204, Vol I, p 112*). Earlier in his cross-examination he had stated: "Before the month of May, 1909, two years or one year or some months before—I had seen the said tin sheds for the first time" (*Vol 1, p 259, ll 3-5*). The *sasan* at the new site not having come into use before August 1907, and the shed on this site having been still under construction in July of that year (*Ex 203, Vol I, p 115, ll 23-24*), this answer might well have been taken to refer to the old site, and the later question put accordingly. Thirdly, there will have been no point in the plaintiff trying to deny the existence of the new *sasan*, or of the shelter there in May, 1909. Fourthly, it will be seen that the proceedings of the Darjeeling Hindu Burning and Burial Grounds Committee which show the dismantling of the old dilapidated shed and its re-erection on a new site with the same materials as far as possible, were produced by the defendants in March, 1933 through their witness R N Banerjee (*Vol 3, p 109, l 32—p 112, l 8*), examined on commission long after Sitanta Kumar Bagchi, who could not, therefore, be making a new case in anticipation of this evidence.

R N Banerjee, it may be observed, gave his evidence in direct negation of the records he produced (*Vol 3, p 108, ll 11-22*).

Q—Do you remember if there was or was not any shed in the cremation ground?

A—There was a shed there which I saw in 1905 or 1906 and which I observed when I went to cremate the remains of Rai Bahadur Das, a medical practitioner at Darjeeling.

(D W 411, Anuplal Goswami, also gave the year of death of Rai Bahadur Das as 1905 or 1906 (*Vol 17, p 315, ll 24-25*)).

Q—Was that shed in existence in the year 1909 when you went to cremate the dead body of the 'second Kumar?

A—It was exactly the same as when I first saw it in 1905 or 1906.

Q—Is the present cremation ground the same as where the body of the Kumar was taken for cremation?

A—The grounds are the same, the place is the same, but it has been improved beyond recognition."

A MEANINGLESS THEORY

The present suggestion that Sitanta Kumar Bagchi was making a new case regarding the cremation ground was not put to the witness himself, and it is clearly an after-thought for which there is no foundation. His evidence does not in fact bear the interpretation which Mr Chaudhuri seeks to put on it to support his meaningless theory. It merely shows that there was no fixed site for the funeral pyre, or *chuta*, as it is called in Bengali: there was only a small patch of flat or level ground, 6 or 7 cubits square, which he noticed (*Vol 2, p 451, ll 13-15*), but cremations were not confined to this spot: other sites might be selected according to convenience where water was available. This is also what later witnesses of the plaintiff say.

Bisweswar Mukherjee, P W 944 (in cross-examination) "There was no marked site or anything, people chose whatever spot they found convenient" (*Vol 10, p 397, ll 23-24*), *Jatindra Chandra Chakravarti, P W 947* "At the *sasan* there was no fixed spot for the pyre" (*Vol 10, p 420, l 10*, see also *ibid, p 422, ll 12-14* for further confirmation of the evidence), *Mannatha Nath Chowdhury, P W 986* "In the old *sasan* there was no marked site for pyres" (*Vol 11, p 283, l 1*). By *sasan* would naturally be meant the whole of the surrounding area, and not merely the square plot, as is made clear by Sitanta Kumar Bagchi himself (*Vol 2, p 452, ll 4-14*).

In my opinion, there was no change of case at all made by the plaintiff by this evidence, as suggested by Mr Chaudhuri, in view of the defendants disclosing the existence of a *sasan* with a shelter at a new site which could no longer be denied: the existence of such a *sasan* was not in fact put to the witness. Moreover, the plaintiff does not rely on this evidence at all as an explanation why the cremation party did not proceed to the new cremation ground.

QUESTION OF ROUTE

Mr Chaudhuri next calls attention to Sitanta Kumar Bagchi's evidence regarding the route followed by the evening procession, which he says points to the 'Thorn Road route, and not that by the Commercial Row and Lloyd Road. The key to the route is said to lie in the location of the old Cutchery Building which was below "Balen Villa", the residence of Mahendra Nath Banerjee, the Senior Government Pleader, where defendants' witnesses R N Banerjee and Geeta Devi were both staying. This is admitted (*vide Kiron Chandra Mustafi, Vol 10, p 384, ll 15-19*). It may be pointed out that the only importance of the route is in connection with the morning procession in which Geeta Devi is supposed to have seen R N Banerjee, as it passed along the road in front of Balen Villa, which would establish the participation of this witness in the cremation that day (*Vol 3, p 160, ll 21-26, p 164, ll 12-13 and p 166, ll 5-8*). Sitanta Kumar Bagchi, however, had nothing to do with the morning procession. In any case, it cannot be supposed that he was being cross-examined about the route of the evening procession in order to elicit from him in anticipation a likely confirmation of the morning route which Geeta Devi would be afterwards speaking to, though it was not known at the time what the plaintiff's case regarding the route was or was going to be.

Sitanta Kumar Bagchi was asked

"Q—By what route did you go to the cremation ground coming out from the "Step Aside"?

A—We reached the cremation ground by passing along the Chowrasta, Market, Chandmari, Sanitarium- (L J), Kaghora"

(Vol 2, p 448, ll 18-21)

This is perfectly ambiguous. Earlier, he had been asked what route should be followed if one had to pass the Postal Mess, going from "Step Aside" to the cremation ground, and he said there were many routes, and the one by the Postal Mess would be a circuitous one (*ibid*, p 442, ll 25-28). Later, he said that one could go to the cremation ground, crossing one side of the Mall and passing by the side of the Observatory Hill (*ibid*, p 443, ll 6-7), but this again is quite indefinite. Asked, however, as to where the crowd in the procession increased, he mentioned the Old Cutchery Building as one of the places where this happened (*ibid*, p 449, ll 21-23), which might suggest the Thorn Road route, but it need not, because people might join on the other route from the Cutchery Building which was only about 50 yards from the junction of Lloyd Road and Cart Road or from Chak Bazar, as the defendants elicited from P W 941, Kiron Chandra Mustafi in cross-examination (Vol 10, p 384, ll 21-23). He also mentioned Chandmari and the L J Sanitarium, but it is nobody's case that the procession passed by these two places. In any view, his statement might be no more than mistaken recollection on his part due to his idea of several persons having joined the procession from the Old Cutchery Building (Vol 2, p 449, ll 28-29). Be that as it may, this part of the evidence certainly does not establish that the witness was deposing falsely.

Another comment made by Mr Chaudhuri is that Sitanta Kumar Bagchi gives a story materially different from that of later witnesses in so far as they say that the cremation party set out searching for a site for the pyre on reaching the *sasan*, while he says that they were looking for a site on their return from the shelter after the rains had abated (Vol 2, p 436, ll 34-35). Obviously, however, there is no inconsistency here, as the witness nowhere states that they did not look for a site on their arrival at the cremation ground.

It is not necessary to examine the evidence of this witness any further. He was a responsible Government officer in the grade of Rs 140/- a month at the time he was deposing (*ibid*, p 466, l 4), and a recipient of gold and silver medals and certificates as a reward for Field Service rendered in 1918 in France, Egypt, Asia Minor, Syria, Turkey and Russia during the last Great War (*ibid*, p 433, ll 25-30). He is not shown to be a partisan witness at all. In my opinion, Mr Chaudhuri has wholly failed to point out any discrepancies or improbabilities, inherent or otherwise, in his evidence which should discredit him, or to advance any valid reasons for holding that the learned judge was "clearly wrong" in accepting his testimony.

OTHER WITNESSES OF EVENING CREMATION

As regards the other witnesses of the evening cremation, as already stated, they were all examined in court, and the learned judge had the

opportunity of observing their demeanour in the box, and in my opinion, the appellate court should not, in the absence of strong and convincing grounds, disregard the view expressed by the trial court as to the credibility of their evidence. I hold that no such grounds have been established before us.

KIRON CHANDRA MUSTAFI

Kiron Chandra Mustafi, P W 941 (*Vol 10, pp 383-386*), is a retired tea-planter who lived at Darjeeling for 34 years, having been Assistant Manager of Bloomfield Tea Estate from 1900 to 1928, this being a garden situated about a mile from the railway station on the way to Ghoom (*ibid, p 383, ll 1-20 and p 385, ll 13-15*). He accompanied the evening procession, that being his only visit to the Darjeeling *sasan*, which, if only on this ground, he might be well expected to remember (*ibid, p 383, ll 21-22*). Mr Chaudhuri ridicules him as a "chance processionist", who as a Kayastha would have no business to attend a Brahmin's funeral, forgetting that such a test would disqualify many of his own witnesses of the morning cremation, and is in fact repudiated by some of them. His evidence is that he went, because people were being called and a sufficient number had not gone (*ibid, p 383, ll 24-28*), on which point there was no cross-examination. He gives the route as that by the Commercial Row, though he is not sure about it (*ibid, p. 383, ll 34-36*). He speaks to the rain and storm, and to his running away for shelter with six or seven others to a shed near a slaughter-house where they waited for about an hour or so till the rain had abated (*ibid, p 384, ll 1-6*). The shelter was a quarter of a mile off (*ibid, p 384, l 40*). On returning to the *sasan* they missed the body, but he came away after a few minutes, as he had a long way to go (*ibid, p 384, ll 10-11*). Some 15 people remained there when he left (*ibid, p 385, l 11*). A point made by Mr Chaudhuri was that he did not ask subsequently whether the body had been found (*ibid, p 385, l 12*), but he made a significant statement that he heard the body had been cremated (*ibid, p 385, l 26*), and in re-examination he made it clearer by saying "I thought that the same body had been found and cremated" (*ibid, p 386, l 10*). Apparently, the staging of the morning procession did not fail to produce the desired result.

BISWESWAR MUKHERJEE

The next witness is Bisweswar Mukherjee, P W 944 (*Vol 10, pp 394-399*), who was in service in the Deputy Commissioner's Office at Darjeeling from 1899 to 1907, and then at Kurseong at the office of the Joint Magistrate from 1907 to 1914 (*ibid, p 394, ll 15-18*). He speaks about a feast at Kurseong on a Sunday, following the *siadh* of the Raja of Kakina. He went up to Darjeeling the previous evening to bring down a musical party to Kurseong for the occasion the next day from the Hindu Public Hall Amusement Club (*ibid, p 394, ll 38-40*). At the Club he heard about the death of the Kumar of Bhowal, and at the request of Sanjib Lahiri whom he met there, agreed to go to the cremation. Sanjib Babu and he actually put their shoulders to the bier on and off on the way. He also mentions the Commercial Row route (*ibid, p 395, ll 1-20*). He did not wait long at the *sasan*, but came away after putting down the body there, partly because

he had to return to Kurseong the next morning and partly because the weather was threatening (*ibid*, p 395, ll 24-26) The following morning he went back to Kurseong with a large number of people from Darjeeling, among whom he mentions R N Banerjee (*ibid*, p 395, ll 33-37) He says he had been to the old *sasan* once in 1901 or 1902 when there was a shed there in a dilapidated condition, but he found none on the present occasion (*ibid*, p 396, ll 8-10) There is nothing in the cross-examination which affects the evidence Mr Chaudhuri, as usual, calls him a chance witness, but the *Kakina siadh* is admitted, and his connection with the Amusement Club, of which he was Assistant Secretary while he was at Darjeeling, is again a fact which could not be, and was not, disputed in cross-examination If this was false evidence, the witness might easily have stayed on at the *sasan* much longer than he did if only to lend point to Mr Chaudhuri's suggestion as to the plaintiff's craving for "corroboration's crafty aid"

JATINDRA CHANDRA CHAKRAVARTI

As for the next witness, Jatindra Chandra Chakravarti, P W 947 (*Vol 10*, pp 418-424), he is a man of Solaghar in the district of Dacca, where the husband of defendants' witness Jagat Mohini Das is also supposed to have had his home, Rajani Kanta Chakravarti being the name she gives of her husband (*Vol 1*, p 281, ll 12-13 and p 284, ll 34-35) The witness was at Darjeeling from 1904 to 1933, and was staying at the house of his sister's husband Rajkumar Kusari, since deceased, his sister being Susila Sundari Devi, now an old lady of over 60 years, who and whose son Sailendra Kumar Kushari have both given evidence to corroborate his story as P W 1016 (*Vol 11*, pp 516-521) and P W 1140 (*Vol 11*, pp 329-333), respectively In 1909 the witness was employed in the Municipal Office at Darjeeling, and he remembers having seen the second Kumar there on three or four occasions during the latter's visit in that year (*Vol 10*, p 418, l 37 —p 419, l 15) He heard the news of the Kumar's death at about 7 or 7-30 P M, and at the suggestion of his sister's husband went over to "Step Aside" with his elder brother Basanta Chakravarti (since dead), to assist in the cremation He found there several persons whom he knew, among whom he remembers Anukul Chatterjee, Sasi Bhusan Bhattacharjee and Fakir Chandra Roy,—the last two names, it will be remembered, having been mentioned by Sitanta Kumar Bagchi along with others (*ibid*, p 419, ll 22-24) He also met Sitanta Kumar Bagchi in the procession (*ibid*, p 419, l 36), which he says went by the Commercial Row route He speaks to severe storm and rain breaking out within a few minutes of their arrival at the *sasan*, in consequence of which five or six of them, including his brother, Anukul Chatterjee and Sanjib Lahiri, ran up and "took shelter in a slaughter-house above," which had a shed (*ibid*, p 420, ll 6-15) They waited there for about an hour, and then went back to the *sasan*, only to find a number of persons running about with lanterns, looking for the dead body which was said to have disappeared They joined in the search, but after 10 or 15 minutes they came away drenched in the rain, but several people stayed on (*ibid*, p 420, ll 15-24) Next day he was due to go to Kurseong for the *Kakina siadh*, but was unable to do so, as he was suffering from the effects of his experience overnight In the afternoon he heard that the Kumar's body had been cremated, which appeared to be strange, but he thought the body had been recovered by those who had remained behind (*ibid*, p 420, ll 25-30) He denies that Jagat Mohini is the wife of

Rajani Kanta Chakravarti of Solaghar, whom he knew, as he was his family priest (*ibid*, p 421, ll 5-15)

The evidence of the witness is challenged, first, because he did not enquire the next day how the body had disappeared, but he explains that he did not do so, as he knew this to be a fact (*ibid*, p 421, l 29) When he found the corpse gone, he was of course "dumb-founded with surprise" (*ibid*, p 421, l 42) Secondly, his reaction on hearing about the cremation of the body the next day is said to be "extraordinary", but he states quite frankly that he thought that the body had been recovered after he had come away from the *sasan*, and did not think it necessary to make any further enquiry (*ibid*, p 422, ll 7-10) There was in fact no further enquiry to make, as the Kumar's own people left the station the very next day Another comment made against this witness is that he said he took shelter in a slaughter-house, but this would be incorrect, only if he meant the *new* slaughter-house, which, however, he did not do, and it is not even suggested in cross-examination that he did, the cross-examination being solely on the point how many minutes' ascent the shelter was from the *sasan* (*ibid*, p 424, ll 8-10) The question of the slaughter-house which is supposed to destroy the evidence not only of this witness, but also of the next witness Chandra Singh, P W 968 (*Vol 11, pp 84-94*), and on which Mr Chaudhuri has laid considerable stress, will have to be considered more fully later on

CHANDRA SINGH

Chandra Singh is a hillman, who, as the learned judge indicates, gives his story of the happenings at the *sasan* in graphic detail (*Vol 18, p 366, ll 17-18*) He is a Government pensioner, who was Record Keeper in the Deputy Commissioner's office at Darjeeling, and has an income of Rs 5,000/- to Rs 6,000/- per year from landed properties, for which he pays Rs 600/- as land revenue (*Vol 11, p 84, ll 11-16 and p 94, ll 1-7*) In 1909 he was attached to the Kalimpong Khas Mahal office, but came to Darjeeling towards the end of April in the course of his official duties, and was staying at his house in Bhutia Bustee, which is some distance below "Step Aside" down Rangit Road (*ibid*, p 85, ll 1-13) He got the news of the Kumar's death from two Bengalee Babus of the Engineer's office between 7-30 and 8 P M at or near the gate of "Wigwam", and went over with them to "Step Aside" which was close by, as they asked him to go (*ibid*, p 85, ll 33-40) He got to the upper storey by the sloping path, and saw there a dead body in a small room lying on the floor, covered with a white sheet (*ibid*, p 86, ll 1-9) He identified the room as Room No 5 where Ram Sing Subha had also seen the body The witness accompanied the funeral procession to the *sasan*, passing along the Commercial Row route (*ibid*, p 86, ll 26-38) They went to the old *sasan* and not to the new, as he says the party carrying the body were "dead tired" and the road to the *new sasan* was "very bad" (*ibid*, p 87, ll 1-4) Setting down the body on a small plot here, they started looking out for a suitable site for the pyre when it began to rain very heavily They got wet and ran for shelter, and some 10 or 15 of them found it in the slaughter-house which they had passed on their way to the burning ground (*ibid*, p 87, ll 6-12) After the rain stopped, they got back to the *sasan* and saw a number of people with lanterns looking out for the dead body "Where is the dead body? Where is the dead body?" they cried (*ibid*, ll 16-19) He got frightened, as supposing the dead man had come to life and returned

and touched him, it would mean his having to stay on the spot for 13 days (*ibid*, p 87, ll 19-21),—a queer explanation, as it would strike us, but not so perhaps for a hillman with his quaint beliefs and superstitions about the supernatural. He hurried back home, purified himself by a bath and went to bed. Next day he got up very late with a chill. He had been to the *sasan* before this in 1902 to cremate his aunt when there was an old shed there (*ibid*, p 87, ll 28-30). The main reason why his evidence is sought to be discredited is his reference to the slaughter-house, and also because he said that Morganstein's house "Rosary" did not exist there in 1909 (*ibid*, p 88, ll 1-3). The suggestion is that he was procured by Upen Bose, who is said to be a relation of Digendra Ghose (*ibid*, p 93, ll 32-39), the latter being presumably the same man who was President of the Bhowal Taluqdar and Proja Samiti (*Vol 18*, p 108, ll 27-30). It is not clear, however, why or how the witness, quite a respectable person, in no way connected with the plaintiff, should or could have produced a story in such circumstantial detail out of his imagination.

MANMATHA NATH CHOWDHURY

The last witness is Manmatha Nath Chowdhury, P W 986 (*Vol 11*, pp 276-283), sole proprietor of the Darjeeling Motor Service, quite a big concern dealing in the sale and hire of motor vehicles, paying annually nearly Rs 2,000/- as motor tax and enjoying the patronage of Government. One of his brothers is in the Imperial Service posted at the Alipore Test House. He came to Darjeeling in 1899 to take up service in the Planters' Club where he was drawing Rs 210/- per month when he left it in 1924 to join the motor business, and has been residing there ever since (*ibid*, p 276, ll 11-26). News of the second Kumar's death was received by him at about 7-30 P M so far as he remembers, through a telephonic message from Sanjib Lahiri who asked him to come over for cremation (*ibid*, p 276, ll 29-32 and p 280, ll 18-19). During the hearing we obtained from the office of the Post Master General, Bengal and Assam, a list showing the telephonic connections on the Darjeeling Exchange in 1909, which was marked by consent as an exhibit in this court, *Ex P M B B (I)*, on the 26th June, 1939, and it shows that there were only five connections of which one was at the Planters' Club, the other four being one at the Gymkhana Club, one at the Deputy Commissioner's office, and two at the Maharajahduraj Bahadur of Burdwan's house "Rose Bank". The witness was one of a set of young men at Darjeeling who considered it their duty to volunteer their services at cremations, the sons of Mahendra Nath Banerjee including R N Banerjee being admittedly in this group (*ibid*, p 276, ll 33-34 and p 282, ll 16-19). This naturally made him a frequent visitor to the *sasan*, and Mr Chaudhuri tauntingly described him as "the hero of a thousand cremations", because he said that he had cremated "some 2000 or 4000 bodies" (*ibid*, p 282, ll 4-5), which counsel chose to take literally, forgetting that this was no more than the familiar way of a Bengalee for saying that he had taken part in innumerable cremations. From the account which the witness gave of the two *sasans*, Mr Chaudhuri went the length of suggesting that he could never have gone to the Kumar's cremation, as if after admitting having taken part in so many cremations, he was likely to blunder in his description of mere physical features. The fatal mistake he made is supposed to lie in his statement "It is difficult to say if the new and old *sasans* are on the same level—but the new *sasan* might be slightly higher" (*ibid*, p 279, ll 21-23). Earlier in his

evidence he stated as follows —“We took the body to the old *sasan* In those days it was difficult to go to the new *sasan* at night as one had to get down into a *ghora* and then to get up to the other side (*witness shows by his hand descent and ascent down and up the sides of a ghora*)” (*ibid*, p 277, ll 16-19) All this was in his examination-in-chief, and not a word was put to him in cross-examination to suggest anything to the contrary Not to be able to state the relative levels of the two *sasans* is no indication of false evidence even Manimohan Sen Gupta, P W 960, who was Assistant Secretary of the Hindu Burial and Burning Grounds Committee at the time, and who admittedly made the plan of the new *sasan* in 1907 for sanction to the proposed constructions (*Ex 202, Map No 2, Book of Maps*) and knew the topography of the place well, giving evidence before this witness, said “I can’t say whether the old *sasan* is relatively lower than the new *sasan*”, though he added that “to go to the new *sasan* by (the old) Sudhir Kumari Road one goes continuously downhill” (*Vol 11, p 37, ll 7-9*) The witness stated quite correctly that the old Sudhir Kumari Road along which they took the corpse was a difficult road, and at points two people could not go abreast (*ibid*, p 277, ll 21-22), and further said that the new Sudhir Kumari Road did not exist in 1909 (*ibid*, p 279, ll 5-7), a fact which the defendants could not deny He did not remember having seen any shed in the old *sasan* (*ibid*, p 283, ll 2-3) He found it difficult to say when the new *sasan* came into use (*ibid*, p 281, ll 39-40), but his evidence is that dead bodies would be cremated in the old *sasan* until the new Sudhir Kumari Road was made, though the new *sasan* would be occasionally used during the day, as happened in the case of Mahendra Nath Banerjee, Government Pleader (*ibid*, p 279, ll 8-14), his first visit to the new *sasan* being on that occasion (*ibid*, p 281, ll 40-41) The witness gives the same story as the others regarding the evening procession from “Step Aside” which he joined at the Chowrasta Junction, and accompanied along the Commercial Row route He did not stop long at the *sasan*, but came away within a few minutes of his arrival, as many other people were there and his presence was not necessary (*ibid*, p 280, ll 22-24) he was going to the *Kakina siadh*, the next morning (*ibid*, p 278, l 7) It had started raining when he got to the *sasan*, and he encountered heavy rain on his way back a little below Morganstein’s garden, which compelled him to take shelter in a shed there for half or three quarters of an hour (*ibid*, p 277, ll 31-33), it was probably a *mah*’s shed (*ibid*, p 281, ll 22-23), and was situated near the site of the present slaughter-house, which, however, did not exist there then, though probably there was a slaughter-house below (*ibid*, p 277, ll 34-38) He heard the next day about the missing of the dead body during the night, and also about another cremation the following morning (*ibid*, p 278, ll 30-39) In his examination-in-chief he gives the information that there was a rain-gauge in the gardens of the Planters’ Club, and that a record used to be kept here of rainfall and temperature The record is not forthcoming, but the witness speaks of a visit of two Bengalee gentlemen to the Club about 2 or 3 years before he left his service there, who are said to have taken away one of the rainfall registers from the Secretary Mr Trim (wrongly printed as Mr Tuim), which they did not return so far as the witness knew (*ibid*, p 279, ll 24-38) The Secretary is said to have initialled a particular page in the book which was pointed out to him by the persons who called for it, and who took it away after giving a receipt for the same (*ibid*, p 283, ll 9-10), which it is said was preserved but has not been produced Reading the evidence of the witness as a whole, I am unable to say that it bears any such obvious marks of falsehood that it must be rejected

In judging the oral testimony of these witnesses, I do not think it would be right to exact meticulous accuracy in regard to details, nor will it do to attach undue importance to small discrepancies between witness and witness, but legitimate allowance must be made for lapse of time, seeing that they are speaking from recollection nearly 25 years old and if this is done, I see no reason whatever why the story they relate should not be accepted as substantially true, however strange it may appear to be

GENERAL ATTACK ON THE EVIDENCE

The defendants have, however, urged certain considerations of a general character as tending to falsify the whole of this body of evidence, which it will be now necessary to examine

They first emphasise the improbabilities of the story, and then say that in point of fact there were no huts or sheds, much less a slaughter-house, where any of the cremation party could have found shelter, nor was there any rain or storm that night

ALLEGED IMPROBABILITIES OF THE STORY

As regards the improbabilities, it is first said that it would be "unnatural" and "grossly inhuman" to leave the body in the rain and run away for shelter. But supposing for a moment that the processionists were overtaken by a sudden burst of heavy rain and storm at the old *sasan*, what should have been the correct conduct on their part which would not lay them open to a charge of "unnaturalness" or "gross inhumanity"? Should they still have run about hither and thither with the *charpoy* over their shoulders, or carried it to a shelter which they did not yet know where to find, or should they have left somebody at the spot to keep vigil over the body till the others returned? Would there be any point in their doing so? None of them had the gift of prophetic vision to have been able to foresee the danger to be guarded against, and the dead did not require the same protection from the weather as the living. So long, therefore, as no disrespect to the "deceased" was intended, and so long as there was no question of abandoning the "dead" body to its fate, one fails to see either improbability or impropriety in the conduct of those who ran away, expecting to return as soon as the rain held off

The evidence does not show that the cremation party all left the body simultaneously if any of them, therefore, were to be held to blame, it could be only those who were the last to leave, and it is not shown who they were. Sitanta Kumar Bagchi says "When I found 2 or 4 persons going upwards, I with my 3 friends began to run upwards" (*Vol 2, p 458, ll 10-11*). His idea was that all those who had gone to the cremation ground left it "I do not think anyone stayed there" (*ibid, ll 16-17*), but this does not imply that they all left together. Kiron Chandra Mustafi says "7 or 8 of us came away among others" (*Vol 10, p 384, ll 3-4*), and then in cross-examination "I cannot say if all ran away from the *sasan* or if any remained, I did not enquire if any member of the family remained when I ran for shelter, some people were on the *sasan* still, but I saw some people also leaving the *sasan*, but I cannot say if any did not leave at all" (*ibid, p 384, ll 35-40*). On returning from the shelter, he did not ask who had remained in the *sasan* (*ibid, p 385, ll 8-9*). Jatindra Chandra Chakravarti speaks only of 5 or 6 people including himself running up and taking shelter in a slaughter-house (*Vol 10, p 420, ll 11-12*). Chandra Singh says "I ran for shelter—and running and falling and stumbling, I had no time to see if any stayed

on at the *sasan*" (*Vol 11, p 90, ll 25-27*), and he speaks of "some 10 or 15 people only" who sought shelter including himself (*ibid, p 87, ll 11-12*) Mr Chaudhuri's objection, therefore, seems to be utterly pointless

OLD VS NEW SASAN

It is next asked why the cremation party should have gone to the old *sasan*, and not to the new, specially as the weather was threatening, and admittedly they had with them Sanjib Chandra Lahiri, Assistant Secretary of the Hindu Burning and Burial Grounds Committee, who might have been expected to guide them to the new *sasan* where there was a proper shelter. The answer is—the night was dark (*Sitanta Kumar Bagchi, Vol 2, p 447, l 29*), the old *sasan* was nearer, the new one was more than a furlong away and the road to it was difficult with a *jhora* intercepting it, and it had already started raining, so that even if the new *sasan* was their objective, they could not avoid being thoroughly drenched before they got there. The very condition of the weather which it is suggested should have taken them to the sheltered *sasan* might have been the reason for detaining them at the other place, without a shed as it was.

It is now admitted before us on both sides that the new *sasan* came into use in August, 1907, but the new Sudhir Kumari Road which gave easy access to it was not constructed until some time in 1912. The plaintiff's evidence is that the old *sasan* would, however, still be in use, and though the defendants attempted to prove the contrary, in my opinion, the attempt has failed, as will be shown presently. It is also now admitted that there was no shed in the old *sasan* in 1909, but there was one at the new, constructed partly with the materials of the old after it had been dismantled. The learned judge has given a fairly correct summary of the proceedings of the Hindu Burning and Burial Grounds Committee which really establish these admitted facts beyond the possibility of dispute (*Vol 18, p 370, l 27—p 371, l 26*).

It is significant, however, that at the trial defendants would not admit at first either the existence of two cremation grounds or the fact that there was no shed standing at the old *sasan* in 1909 (*see plaintiff's petition of the 22nd December, 1934, Vol 11, p 296, para 4*). Their suggestion at the earlier stage of the case apparently was that there was only one cremation ground and that provided with a shelter, so that this fact alone would be enough to destroy the plaintiff's story. If the evening processionists carried the body to such a place for cremation, there would obviously be no occasion for any of them to run away even in rain and storm, and if the body was not left unattended, it could not possibly have disappeared.

CHARGE OF "BIAS" AGAINST THE JUDGE

Such a case could not, however, be supported for a moment in the light of the facts disclosed by the defendants' own documents, particularly the proceedings of the Hindu Burning and Burial Grounds Committee referred to above, which, as stated, they produced through their witness R. N. Banerjee. Lest perhaps it might reflect on their unwavering regard for truth and for nothing but the truth which Mr Chaudhuri claimed for his clients, he indignantly repudiated the suggestion that this was their case at any stage. He went the length of accusing the learned judge of "bias", because of his

saying that "a most determined attempt was made by the defendants up to a stage to show that the new *sasan* had always been the *sasan*, and the shed that stood there in May, 1909 had always been there" (*Vol 18, p 370, ll 12-14*)

In order to see where the truth lies, one has, however, only to read the evidence of defendants' own witness R N Banerjee already quoted (*Vol 3, p 108, ll 11-22*), which was to the effect that the *sasan* he saw in 1909 when he went to cremate the dead body of the second Kumar was the very same *sasan* he had seen in 1905, shed and all,—evidence, be it noted, as I have already pointed out, given in direct contradiction to the records which he himself produced. Here was a member of the English Bar speaking, and speaking with no halting accents, and I cannot help remarking that Mr Chaudhuri might well have reserved his indignation for his own witness rather than for the trial judge.

NO CHANGE OF CASE ON PLAINTIFF'S SIDE

On the plaintiff's side it will be seen there was no change of case at all made regarding the cremation ground. His case all along was that the *sasan* to which the body was taken in the evening had no shed in it at the time, and he was never concerned to dispute the fact that there was a shelter at the new *sasan*. His earliest witness Sitanta Kumar Bagchi definitely stated that there was no shelter (*Vol 2, p 436, ll 14-15*), and in cross-examination he also indicated that the cremation ground was a *kutchra*, and not a *pucca* or brick-built one (*ibid, p 451, ll 6-7*). There was no suggestion in cross-examination that there was a newly-built *sasan* with a *pucca* shelter. It does not appear that the defendants' commission witnesses like Shyamadas Banerjee or Rajendra Nath Sett or Bijoy Krishna Mukherjee or Mohendra Nath Banerjee or any of the others who speak about the cremation ground, hinted at the existence of two *sasans*, one old and abandoned, and the other recent and in use. It may be that there was no cross-examination of any of these witnesses from the plaintiff's side to suggest the existence of the old *sasan* as distinguished from the new, but this is easily accounted for by the fact that a case of two *sasans* had not yet been made by the defendants. A brief reference to the evidence of some of these witnesses may be given —

(1) SHYAMADAS BANERJEE (*Vol 1*)

- (*p 258, ll 26-27*) "There was a *pucca* tin shed at that time in the cremation ground at Darjeeling where the Kumar's dead body was burnt "
- (*p 259, ll 3-5*) (*in cross-examination*) "Before the month of May, 1909, 2 years or 1 year or some months before—I had seen the said tin shed for the first time "
- (*p 260, ll 3-5*) "This is not true that in the month of May, 1909, there was neither any tin shed at that place nor was there any spring "

(2) RAJENDRA NATH SETT (*Vol 1*)

- (*p 302, l 31*) "There was a tin shed in the cremation ground "

(3) BIJOY KRISHNA MUKHERJEE (*Vol 1*)

- (*p 315, l 15*) "There was something like a shed "
- (*p 320, l 42—p 321, l 1*) "The tin shed was perhaps at a distance of 5/6 cubits from the pyre "

(4) MOHENDRA NATH BANERJEE (Vol 1)

(p 324, ll 39-40) "Sometimes on the hill-side, sometimes within something of the nature of a tin shed "

(p 329, ll 1-2) "I distinctly remember that I saw that shed of which I have already said, at that time on the 'cremation ground' "

If I am not mistaken, the first suggestion of a new *sasan*, which was a regular *sasan*, close to the place where the second Kumar's body is said to have been taken in the evening, was made in a definite form to plaintiff's witness Bisweswar Mukherjee, P.W 944

"Q—Did you know then that there was then a new *sasan* called Hindu Cremation Ground?

A—No

I did not go to the *sasan* after 1909 I did not know then that quite close to it was a 'regular *sasan*' On all occasions I went to the *sasan*, I went to the one I went to in 1909

Q—And there was no other?

A—No" (Vol 10, p 397, ll 14-21)

The witness, it will be remembered, was employed in the Deputy Commissioner's Office at Darjeeling only up to 1907 when he was transferred to Kurseong, and was not likely, therefore, to know about the re-construction of the *sasan* at the new site which commenced only in the latter half of that year

The next witness of the evening cremation, on the plaintiff's side was Jatindra Chandra Chakravarti, P.W 947, (Vol 10, pp 418-424), but not a word was put to him in cross-examination about there being a new *sasan*

DEFENDANTS' CASE OF A SINGLE SASAN

It might be interesting to point out here that an attempt was made to elicit from an earlier witness of the plaintiff Madhusudan Mukherjee, P.W 807 (Vol 9, pp 316-318), on the strength of a supposed previous statement of his, that there was only one cremation ground for the Hindus down the Kagjhora. The original of this statement which appears to have been recorded in July, 1921 by a Deputy Magistrate at Patna in connection with the Lindsay enquiry, was forwarded by the District Magistrate, Patna, to the Collector of Dacca at the time, as can be seen from the correspondence printed at pp 210-212 of the Appendix volume, but only a copy was put to the witness when he was under examination on the 11th August, 1934, without any evidence how or from whom the copy was procured. In November, 1935 Rai Bahadur Sasanka Coomar Ghosh was writing to enquire if the original could be traced in the office of the District Magistrate at Patna, but it was not forthcoming (*ibid*, p 213). The witness did not remember if he made the statement, nor was he prepared to deny it (Vol 9, p 317, l 35), but the genuineness of the copy seems to me to be more than doubtful, and the document is certainly not evidence. The witness, however, admitted having said in answer to a question "I know there is one cremation ground for the Hindus down the Kagjhora", but he explains that he knew of only one, and did not know if there were more than one (*ibid*, p 318, ll 10-15). As I read it, the object of the cross-examination was not to obtain a denial, but only a confirmation

of his previous statement, showing that the defendants had not yet abandoned their case of a single cremation ground of course with a *pucca* shelter on it.

PLAINTIFF'S EVIDENCE OF TWO SASANS

While the plaintiff had still several of his witnesses to come and depose about the evening cremation, he put into the box Moni Mohan Sen Gupta, P W 960, (*Vol 11, pp 35-39*), who gave definite evidence regarding the existence of the two *sasans*. He was Assistant Secretary of the Hindu Burial and Burning Grounds Committee before Sanjib Chandra Lahiri, and as I have already pointed out, he prepared the plan which had to be submitted to the Darjeeling Municipality for sanction to the proposed re-construction of the *sasan* at the new site (*Ex 202, Map No 2 in the Book of Maps*). This shows quite distinctly the position of the "existing" and of the "proposed" flats and sheds for cremation. His evidence is fully borne out by the records of the Committee. He says that in 1907 the shed at the old site was in a dilapidated state and that its materials were utilised in making the new shed (*Vol 11, p 35, l 38—p 36, l 2*). He corroborates other witnesses of the plaintiff that in the old *sasan* there was no fixed *pucca* spot for cremation (*ibid, p 36, l 16*), and proves the existence of a *ghoia* between the old and the new *sasan* (*ibid, p 36, ll 32-36*). He also makes it clear that there was no communication from the old *sasan* to the new and the depths between the two were "sheer" at places (*ibid, p 38, ll 6-7*). He was at Darjeeling from 1904 to 1908 as an Estimator in the "Superintending Engineer's office, P W D, and says that the first person to be cremated at the new *sasan* after its construction was his mother who died in August, 1907 (*ibid, p 37, ll 13-14*), a fact which the defendants accept and is corroborated by D W 411, Anuplal Goswami (*Vol 17, p 03, ll 30-33*). After this, according to him, the new *sasan* was used so long as he was at Darjeeling (*Vol 11, p 38, ll 20-21*), but as he explains in re-examination, there was still no bar to anybody going to the old *sasan* and using it for cremation (*ibid, p 39, ll 22-23*).

It is not necessary to refer to all the other witnesses of the plaintiff who speak about two *sasans*. suffice it to cite only a few —

- (1) Dhanjit, P W 966 (*Vol 11, p 61, ll 37-40*)

"There are two cremating places at Darjeeling—it is two places, one roofed over, and the other not, close to each other",

- (2) Ram Sing Subha, P W 967, speaking of the morning cremation (*Vol 11, p 67, ll 4-6*)

"The cremation ground we went to was the new cremation ground, not to the old cremation ground. At that time there was no *pucca* pyre on the new cremation ground" (This last is a fact corroborated by the records of the Burning Grounds Committee, which shows that the pyre shed was erected somewhere about June, 1909 (*Ex Z (129), Vol I, p 141, l 16*))

- (3) Chandra Singh (*Vol 11, p 86, ll 38-39*)

"There are two burning grounds at Darjeeling"

As to whether the old *sasan* was still in use after the new one was completed in August, 1907, though without the pyre shed and without a proper approach, as is the plaintiff's case, the evidence is overwhelming on his side. Mr Chaudhuri says that none of the plaintiff's witnesses gave any

specific instance of any body being burnt in the old *sasan* after the new had come into existence, but this is an inaccurate statement. Sitanta Kumar Bagchi at least gives one such instance: he went to this *sasan* in December, 1908, to cremate a son of Harendra Kumar Sen, a postal clerk (*Vol 2, p 443, ll 18-25*)

Learned counsel also calls attention to a statement made by Basanta Kumar Mukherjee, P W 823, one of the plaintiff's witnesses of the morning cremation, to the effect that the old *sasan* was "in an abandoned condition" (*Vol 9, p 384, ll 13-15*), but this was said in examination-in-chief and cannot imply that no one could or would go to the old *sasan* for cremation. The statement of Madhusudan Mukherjee, P W 807 (*Vol 9, p 318, ll 10-15*), on which, again, he relies, has been already dealt with. It is equally futile for Mr Chaudhuri to refer to the evidence of Moni Mohan Sen Gupta, P W 960, who, as pointed out before, clearly states in re-examination that after the new *sasan* came into existence, there was no bar to the use of the old one (*Vol 11, p 39, ll 22-23*). Another witness of the plaintiff, Kazi Samsuddin Ahmed, P W 1137, on whom also counsel relies clearly gives him no support, for he states quite plainly "I cannot say if there is now any bar to burning dead body on the old cremation ground", adding that "hillmen still bury their dead bodies at any place of the cremation ground they like" (*Vol 11, p 303, ll 19-21*), which certainly does not show that Hindus were prevented from burning dead bodies there.

OLD SASAN STILL IN USE IN 1909

On the other hand, there is a large body of evidence on the plaintiff's side (partly referred to already) showing that both *sasans* were used simultaneously. Thus, to recall only a few of the witnesses, Durga Prasad Baishy, P W 964, says "There are two *sasans* at Darjeeling—one is to the north of the other and some distance off. Bodies are cremated at both places" (*Vol II, p 54, ll 2-4*). Manmatha Nath Chowdhury, P W 986, again, speaking about his personal experience, states that until the new Sudhir Kumari Road was made he would cremate dead bodies in the old *sasan* (*ibid, p 279, ll 8-10*), his first visit to the new *sasan* being, as he says, in 1911 or 1912 on the occasion of the death of Mahendra Nath Banerjee (*ibid, p 281, ll 40-42*), which according to R. N. Banerjee took place on the 21st August, 1911 (*Vol 3, p 107, ll 1-2*).

Apart from all this, there is the evidence, as the learned judge points out (*Vol 18, p 372, ll 31-34*), of one of the defendants' own witnesses, Sarada Prasad Bhattacharjee, D W 402, retired Head Mohurrir of the Burdwan Raj Estate at Darjeeling, who says "I first went to Darjeeling *sasan* 27 or 28 years ago in 1315 or 1316 B S" (which would correspond to 1908-1909), (*Vol 17, p 215, ll 39-40*) he was referring to the old *sasan* and not to the new, as the new Sudhir Kumari Road had not yet been made (*ibid, p 216, ll 1-3*), and as he also explained to the court (*ibid, p 216, l 14*). In his examination-in-chief he said "There was an old *sasan* after the new *sasan* was made", and then added, "upon that the old *sasan* was closed" (*ibid, p 208, ll 31-32*). In cross-examination he repeated the statement that the old *sasan* ceased to be used after the new *sasan* was made, but had to admit at once that this was only his guess and he had no personal knowledge on the point (*ibid, p 218, ll 3-5*).

On the defendants' side, there are two witnesses on whose evidence Mr Chaudhuri strongly relies, Frederick Lofts, D W 13 (*Vol 12, pp 401-408*), and James Emil Morgenstern, D W 398 (*Vol 17, pp 127-133*). Lofts, a retired Staff Sergeant, joined the service of the Darjeeling Municipality as Market Superintendent in April, 1907, and became Superintendent of Conservancy in November, 1908, which post he held till he retired in 1915 (*Vol 12, pp 401, ll 10-17*). As Conservancy Superintendent it was his duty to inspect burial grounds within the Municipality (*ibid, p 401, ll 21-24*). He knew the Hindu cremation grounds, both old and new, and saw the new one some months after he had joined as Market Superintendent (*ibid, p 402, ll 36-37*).

Q—When you saw the new cremation ground, after that, where used the bodies of Hindus to be burnt?

A—On the pyre which the Engineer had made

Q—Was the old cremation ground in use in that time?

A—No

Q—Why?

A—Because the Vice-Chairman told me the old burning ground was not to be used any more and to inform the man in charge—the *dome*—that there be no more cremation there" (*ibid, p 403, ll 3-11*)

It is rather curious that if the Municipality wanted to close the old burning ground, it should not have followed the statutory provision of giving public notice of its intention to do so, and then after hearing objections, affixing on a conspicuous part of the ground itself a notification for its closure, as required by s 256 of the Bengal Municipal Act, 1884, which had been made applicable to Darjeeling by Bengal Act I of 1900. The defendants have given no evidence to show that any such procedure was followed, and I refuse to believe that the municipal authorities should have been content merely to give instructions to the *dome* in charge, through their Conservancy Superintendent. Apart from this, it is not at all clear what means the witness had of knowing if cremations were not actually going on at the old *sasan* after the new one had come into use. In cross-examination he admits that he had seen very few cases of death, and was speaking from memory (*ibid, p 404, ll 11-14*).

TUTORED EVIDENCE FOR THE DEFENCE FREDERICK LOFTS

A reference to other parts of his evidence will at once show that his memory for certain things was only too good. He remembers, for instance, having "taken his hat off" to the second Kumar the first day he met him at the entrance of the glazed verandah in "Step Aside", he remembers the Kumar's "nodding back to him" and his saying, "if anything is required, kindly inform me" (*ibid, p 401, l 33—p 402, l 2*). He remembers meeting him again another day at the entrance of the house, this time in Jodhpur breeches, and asking, "Is everything right?", and being told in reply, "All right" (*ibid, ll 6-8*). Still another day he remembers seeing him mounted on a brown waler near his gate and wishing him "Good Morning", and then both riding up together to the top of the Rangit Road (*ibid, p 402, ll 12-15*). His recollection does not stop here—he met the Kumar also at billiards at Jones' saloon, playing with Balen Banerjee (*ibid, p 402, ll 16-19*).

there was also another young gentleman with them, "of the same build as Balen", whom he had seen over and over again at Balen's house just above the meat market—presumably the Kumar's *fidus Achates* Satyendranath Banerjee (*ibid*, p 405, ll 20-23) He even remembers that the first day he met the Kumar and his companions at billiards, they played one game and retired (*ibid*, p 405, ll 37-38) He sat and watched other people play, but of course did not remember who played after the Kumar and his party had their game (*ibid*, p 406, ll 1-3), though he had a "clear recollection"—"clearest"—that he and his friend Mr Muccard left the billiards saloon before dinner hour, with Mr Dunn just behind them (*ibid*, p 406, ll 15-18) The second day he saw the Kumar and the other two—the same three—playing there, he went in and called for a glass of beer—of this he has "definite recollection", and he remembers also "distinctly" that he went home just after his glass of beer (*ibid*, p 406, ll 24-30) His recollection was obviously the clearest on points on which he knew contradiction was not possible Asked if he wished to say that he had a good memory, he very modestly replied "I can remember things, special things, from when I was five years of age" (*ibid*, p 406, ll 6-8), and as he explained, "the death of a Kumar is a special event, and if it gets with (*sic*) one's mind, one would remember that more than any other ordinary event" (*ibid*, p 407, ll 4-5) "Anything special in a Kumar saying something in English?"—"He spoke a few words, very few words, and that is the reason why I remember He would not speak long sentences" (*ibid*, p 407, ll 8-10)

It would tax the credulity of any court to place the slightest reliance on the testimony of such a witness, and speaking for myself, I have no hesitation in holding that it is tutored evidence almost from beginning to end

JAMES EMIL MORGENSTERN

As regards the next witness Morgenstern, he is a son of old Morgenstern who had his Vegetable Gardens in the cremation ground area and died on the 30th January, 1935 The witness was a boy of 9½ years in May, 1909, and yet we are asked to believe that he can give competent evidence regarding the use of the *sasans* about this time It is true that he came to live in this area in 1907 when his father built his new house "Emil's Cot", and was residing there since, but neither he nor his father had any concern with any cremation ground, and as he himself says, he never accompanied a Hindu funeral procession to the *sasan* (*Vol 17*, p 131, ll 29-30) He merely states that about a year after he came to this house he saw the new cremation ground put in use, but also admits having seen the old *sasan* since coming over here, and he adds "I cannot recollect how long the old cremation ground continued to be used, but I think it was used for a very short time afterwards" (*ibid*, p 128, ll 23-28) He agrees that Hindu gentlemen who used the old cremation ground as well as the new would know better when the former ceased to be used as burning ground (*ibid*, p 132, ll 13-15) It is difficult, therefore, to attach any importance to the evidence of this witness

He, however, produced a map which purported to be a "true copy" of a municipal plan of the Vegetable Gardens leased out to his father by the Darjeeling Municipality, bearing date 29th July, 1909, which, he says, correctly represents the things depicted on it as at that date (*ibid*, p 127, ll 29-31), and Mr Chaudhuri points out that this map does not show the old *sasan*, though it indicates the site of the new cremation ground by the words "pyre shed" The map has not been legally proved the witness says

that he found it among his father's papers (*ibid*, p 127, ll 21-23), and professes to recognise the *facsimile* signature of the Municipal Engineer Robertson on it from the signature of this official which he had seen in other documents in his possession (*ibid*, p 127, ll 25-29). It was only marked for identification, and will be found among the unexhibited documents in *Appendix Volume*, p 195. Even if the map is admissible, I do not think any conclusion can be drawn from the mere fact that the site of the old *sasan* is not depicted in it.

In my opinion, there is nothing whatever in the evidence to show that the old *sasan* was not or could not be in use in May, 1909, merely because the new *sasan* had come into existence in August, 1907, and it is not possible to reject the plaintiff's story of the evening cremation on this ground any more than on the ground that the cremation party did not betake themselves to the new *sasan*, equipped as it was with a proper shelter which promised them safe cover against inclement weather.

As I have already indicated, the condition of the weather alone might afford a simple and sufficing explanation for stopping short at the old cremation ground, even if the new *sasan* be supposed to have been their original destination, but apart from this, there might still be very good reason for avoiding the new *sasan*, partly because of the dark night and partly because of the difficulty of the approach to it. If the plaintiff's evidence of rain and storm is accepted, that would only furnish an additional reason. Rain and storm failing, his case will of course wholly fail.

JHORA BETWEEN OLD AND NEW SASAN

The evidence on the plaintiff's side is that there was not even a defined foot-track from the old to the new *sasan* at the time, the whole of the way between the two was covered with jungle, and the gradient was steep, and besides this there was a *ghora* or a sort of a ravine crossing the path. The old Sudhir Kumari Road, which was called a road only by courtesy, as recorded in the report of the Hindu Burning and Burial Ground Committee, *Ex Z* (134) (*Vol I*, p 104, ll 25-26), stopped short at the old *sasan*, and it was not until 1912 that it was improved and continued southwards past the new *sasan* as the new Sudhir Kumari Road, after which the old *sasan* was practically abandoned.

It is sufficient to give only a few relevant extracts from the plaintiff's evidence on the point —

(1) P IV 960, *Mom Mohan Sen Gupta* (*Vol II*)

"The new *sasan* was 300 to 400 feet from the old *sasan*. Between the two there used to be jungle in my time. The Sudhir Kumari Road was very narrow, very steep, with steps at points and made very uncomfortable going. There were no lights in that road in my time" (p 37, ll 9-12).

"To the south of the 'existing flat' and between that and the new flat is shown a *ghora*—a small *ghora*. By it water passes out in the rainy season. The rainy season in Darjeeling is from the end of April to August" (p 36, ll 21-24).

(*In cross-examination*)

"Q —One can walk from the old *sasan* to the new?"

A —No, except by the Sudhir Kumari Road.

Q —What would prevent one?

A —Jungle and slope

Q —By 'jungle' you mean 'shrub'?

A —Yes

Q —By 'slope' you mean lower—that the new *sasan* is lower in level?

A —There was no communication or foot-path—the depths between are sheer at places I cannot tell the gradients" (p 37, l 36—p 38, l 8)

(2) P W 963, *Indra Shing Satru*, (Vol 11)

"To the north of that *sasan* was the old *sasan* and between the two a small *ghora* Between the two is jungle also, dwarfish hilly jungle—about 5 or 6 feet high" (p 50, ll 9-11)

(In cross-examination)

"The old *sasan* is 50 feet from the new *sasan* as a crow flies, and if you go by the road, about 300 feet Between the two runs a narrow zigzag road

To Court

"It is wide enough for a single man to pass Two cannot go abreast In the small *ghora* a little water trickles It is not even a foot deep and the depth of the flowing water is an inch or half an inch The *ghora* still exists" (p 51, ll 915)

(3) P W 967, *Ram Sing Subha* (Vol 11).

"Between the two *sasans* was a *ghora* which was across our way It was difficult crossing with the dead-body at the time I spoke of At that time the new *sasan* was not visible from the old On the other side of the *ghora* as one goes to the new *sasan*, the land is now better as landslips brought some earth down there The *ghora* is now narrower than it used to be" (p 69, ll 14-20)

(4) P W 968, *Chandra Singh* (Vol 11)

"Road to the new *sasan* was very bad there was no road but foot-path and at a point was a slope—one has to descend and ascend" (p 87, ll 3-4)

(In cross-examination)

"In 1909 the way to the new *sasan* from the old was not even a regular track—not clear at points either Not even as good as a 'chor bato' A 'chor bato' is used as a short-cut by hillmen and is generally very steep and very bad By 'bad' I mean 'impossible to pass'" (p 92, ll 28-32)

(5) P W 979, *Laksmi Chand* (Vol 11)

"To go to the *sasan* a new road has been built—this was built 20 or 22 years ago Before this road was made, dead bodies were burnt at the old *sasan* as well as the new, as it was more difficult to go to the new *sasan* than to the old and the road was very bad and there was jungle including *sasni* nettle" (p. 242, ll 36-40)

(6) P W 983, *Santa Bir Singh* (Vol 11)

"At first there was the old *sasan* and the road to it very bad"
(p 260, ll 21-22)

(7) P W 986, *Manmatha Nath Chowdhury* (Vol 11)

"In those days it was difficult to go to the new *sasan* at night, as one had to get down into a *ghora* and then to get up the other side The Sudhir Kumari Road along which we took the corpse was difficult road and at points two people could not go abreast There was electric light up to the *Butcher bustee*, not up to the *sasan*" (p 277, ll 16-19 and ll 21-23)

"The sides of the *ghora* on one's way to the new *sasan* were jungly" (p 279, l 15)

(8) P W Kazi Samsuddin Ahmed (on commission) (Vol 11)

"The Old Sudhir Kumari Road was very narrow Very often in some places it would be very inconvenient for two persons to proceed together with any dead body by that road In the rainy season, it was very inconvenient" (p 301, ll 25-28)

"There is a streamlet between the old and the new cremation ground If one has to go to the new cremation ground *via* old Sudhir Kumari Road, one would have to go after crossing that aforesaid streamlet There was no bridge over that streamlet Two sides of the streamlet are high and in the middle there was a hollow One would have to go to the new cremation ground on descending from the upper side and again on making an ascent Some places of the streamlet were wet, somewhere there was 6 to 9 inches of water and somewhere it was dry Water was not "stained" (sic, would not stand?) anywhere Water would flow down from upper surface Water would increase if there were rains, and there would be mud, and water would flow down in stream gradually Old Sudhir Kumari Road has shrubs not only near about the place of the streamlet, but on two sides thereof throughout There were plants called *shushnu* and *achhalla* (nettle) At present the streamlet has been filled up to some extent by land slip from above" (p 302, l 37—p 303, l 13)

This body of evidence practically remains unchallenged, and neither the map of the cremation grounds, *Ex 36* (Map No 1 in the Book of Maps), nor the map of Morgenstern's Vegetable Garden, *Ex 411* (Map No 3, *ibid*), lends any support to Mr Chaudhuri's suggestion that there was no *ghora* between the two *sasans*. Morgenstern himself admits that "between the two there was a narrow ravine or defile as I described the *ghora* and there was scrub" (Vol 17, p 130, ll 22-24), and in fact showed the position of the *ghora* in his map at the point marked "W", saying that "during a heavy rain-storm you have a streamlet running down this channel" (*ibid*, ll 36-37)

GOOD REASONS FOR AVOIDING NEW SASAN

Learned counsel lays stress on what is admittedly a fact that the morning cremation took place at the new *sasan*, but it was never the plaintiff's case

that this cremation ground was altogether inaccessible, specially during day time on the other hand, some of his witnesses quite frankly stated that they had attended day cremations at this site even before the new Sudhūr Kumārī Road was made, as, for instance, on the occasion of the death of Mahendra Nath Banerjee, the Government Pleader. It does not follow that there would be any improbability in a funeral party choosing the old *sasan* rather than the new for a night cremation, particularly in the kind of weather which is said to have prevailed on the night of the 8th May.

Neither can any inference adverse to the plaintiff's case be drawn from the fact that the rescuing sadhus might have crossed the *ghora* between the two *sasans* that very night. The plaintiff's evidence is not that the *ghora* was impassable—it might be only a little streamlet, with no large volume of water flowing through it except probably during rain, but the whole question is whether or not the fact that it was there, coupled with the actual condition of the track and the surrounding area, might not be a reasonable enough ground to dissuade a night cremation party, from going to the old *sasan*.

SUPPOSED ABSENCE OF HUTS AND SHEDS FOR SHELTER

The next question to be considered is about the huts or sheds in which the evening processionists are said to have found shelter during the rain and storm. The evidence on the point may be briefly collated for the sake of easy reference.

(1) *Sitanta Kumar Bagchi (on commission) (Vol 2)*

Went into a small shelter with tin roofing, no enclosure, but bench within it, more than a mile off from the *sasan* (p 436, ll 9-13) dimensions about 8 or 10 cubits by 5 or 6 cubits (p 458, ll 20-21) speaks of a segregation camp at a higher level, about 1000 or 1200 cubits off, but did not take shelter in it, as persons suffering from infectious diseases stayed there (p 456, l 24—p 457, l 8 and p 459, ll 17-21)

(2) *P W 941, Kiron Mustafi (Vol 10)*

Got into a shed near a slaughter house (p 384, ll 4-5), about a quarter of a mile off (*ibid*, l 40) no cross-examination regarding dimensions or other particulars

(3) *P IV 947, Jatindra Chandra Chakravarti (Vol 10)*

Took shelter in "a slaughter house" above the *sasan* it was a *ghar*, a shed (p 240, ll 12-15) only cross-examination—10 or 15 minutes' ascent from the *sasan* (p 424, ll 8-10)

(4) *P IV 986, Manmatha Nath Chowdhury (Vol 11)*

Left the *sasan* within a few minutes of his arrival, and encountering rain on the way back a little below Morgenstern's garden—within the garden itself—took shelter in a shed there (p 277, ll 23-24 and 31-33) shed was near present slaughter house in the shed no slaughter used to take place then, but probably there was a slaughter house below the present slaughter house did not exist where it is now (*ibid*, ll 34-38) going along the old Sudhūr Kumārī Road to the new *sasan*, the shed would be to the left, and a Mahomedan Burial Ground to the right (p 279, ll 17-20) from the *sasan* to the shed, going up-hill, it might take 15 to 20 minutes (p 280, ll 39-40) it was the first shelter, as one came from the old *sasan*

no other shelter near about except higher up no further shelter down the *sasan* to his knowledge it was probably a *mali's* shelter—did not know whether it was Morgenstern's went up a sort of pathway to the shed by the side of a garden shed was open on all sides (p 281, ll 14-25)

NON-EXISTENCE OF NEW SLAUGHTER HOUSE

It will be seen that none of the witnesses speak of the new slaughter house, which, it is in fact admitted by P W 986, Manmatha Nath Chowdhury, giving evidence on the 19th December, 1934, did not exist there in May, 1909 (Vol 11, p 277, ll 37-38) The plaintiff, through his witness Kazi Samsuddin Ahmed, who was examined on commission on the 26th and 27th December of that year, actually proved certain correspondence between the Hindu Burning and Burial Grounds Committee and the municipal authorities, showing that the new slaughter house was constructed somewhere about August, 1911 (see *Ex 415, Vol I, p 150 and Ex 416, ibid, p 154, ll 31-34*)

To prove the date of its construction, the defendants need not have put in, as they did two years later, the official records from the Darjeeling Municipality (*Ex Z (356) series, ibid, pp 464-493*) This evidence, however, is useful as showing that there was a slaughter house in this area before the new one came into existence, which had to be demolished only in or about June, 1909, on account of a landslip caused by heavy rains in that month (*Ex Z (356) ibid, p 466, office copy of a letter from the Vice-Chairman of the Municipality to the Sanitary Commissioner for Bengal and the Sanitary Engineer, Bengal*) The "last heavy rains" in this letter cannot obviously refer to the rains of June, 1908, as Mr Chaudhuri would like to say in order to obliterate all traces of a slaughter house in this locality in May, 1909, forgetting that his own witness Morgenstern, D W 398, clearly stated that in 1909 there was a slaughter house in the northernmost section of the old Mahomedan cemetery facing Jail Parade Ground (Vol 17, p 128, ll 13-15), and that to get to it, one would walk up the old Sudhir Kumari Road through the northernmost patch of his father's Vegetable Garden and up as far as the top-end of the said cemetery and down to Slaughter House Road (*ibid, p 129, ll 1-4*)

This slaughter house is in fact shown on the map the witness produced (*Appendix Volume, p 196*), bearing date the 29th July, 1909, which alone should put a quietus to Mr Chaudhuri's suggestion that the old slaughter house had been pulled down in 1908

As regards this map, it may be pointed out in passing, that, as already stated, it was not admitted in evidence by the trial judge, not having been strictly proved, but on the defendants thereupon calling for the original from the Municipality, they sent in certain blue prints which were said to be replicas of the original, and these have been marked as exhibits J E M. 1-4 in this court by order dated the 20th February, 1939

It appears that proposals for re-building the slaughter house at a new site started in the month of June, 1909, as is evident from *Ex Z (356) (25) (Vol I, p 465)*, and the Hindu Burning and Burial Grounds Committee were consulted in the matter in November, 1909 (see *Ex Z (356) (3), ibid, p 477, read with Ex Z (356) (2), ibid, p 473, margin, ll 25-31*) It further appears that some portions of the lands leased out to Morgenstern for the Vegetable Gardens were resumed from him by the Municipality for the purpose, in spite

of his protest (see the Vice-Chairman's notice to Morgenstern dated the 14th July, 1910, Ex Z(356) (5), *ibid*, p 478, and a subsequent letter to him from the Chairman dated the 7th February, 1911, Ex Z(356) (20), *ibid*, p 486)

Morgenstern indicated the proposed site of the new slaughter house as the green plot in his map at the top of the big patch marked "Y"

Kazi Samsuddin Ahmed, who, as stated above, proved the correspondence referring to the new slaughter house, said in examination-in-chief that so far as he remembered, it was constructed in the year 1907 or 1908 (*Vol 11*, p 302, ll 5-4) This was evidently a mistake on his part, and not a deliberately false statement, as Mr Chaudhuri supposes, for the plaintiff was not at all concerned to make out the existence of the new slaughter house in May, 1909 The learned judge has quite correctly accepted the evidence of Manmatha Nath Chowdhury on the point (*Vol 18*, p 373, l 7)

It is quite clear that the non-existence of the new slaughter house does not destroy the evidence of any of the plaintiff's witnesses of the evening cremation Two of them, Kiron Mustafi and Manmatha Nath Chowdhury, only speak of going into a shed near a slaughter house, while two others, Jatindra Chandra Chakravarti and Chandra Singh say that they took shelter in a slaughter house There is nothing in the evidence of any of these witnesses to show that the slaughter house they were speaking of was not or could not be the old slaughter house

As to whether apart from the slaughter house, there were any huts or sheds near about, which might have afforded shelter, it is useless to argue from Morgenstern's map that no such huts or sheds existed, or to refer to Morgenstern's evidence that there were no sheds or huts in his father's Vegetable Garden, but only a number of glass-houses and conservatories, two in the lowest patch and two in the central patch, which would remain open only up to 4 or 5 p.m., besides the Municipal Magazine for storage of explosives, which was always under lock and key There is nothing to show the purpose for which the map had been prepared, and even if it be assumed that it was the plan which was forwarded to his father with the notice of the 14th July, 1910, showing the area which it was proposed to take over from him for the purpose of the new slaughter house (*Vol. I*, p 178), there is hardly any reason why it should show all the small huts and sheds in the garden Secondly, Morgenstern himself admitted that there were servants' quarters in this area in 1909, by which he meant quarters of *malis*, servants and syces, which according to him were situated about 20 or 30 yards north and west of "Emil's Cot" (*Vol 17*, p 132, ll 27-28), and east and south of Sudhir Kumari Road, and were made of corrugated sheeting and plain sheeting (*ibid*, p 133, ll 11-16) Manmatha Nath Chowdhury as well as the other witnesses might easily have been referring to one or more of these *malis'* sheds

The fact that none of them sought shelter in the rest house at the new *sasan*, seems to me to be of no consequence whatever In my opinion, the learned judge came to a right conclusion on the question of shelters, and I hold that there is no substance in the point raised by Mr Chaudhuri

5 ALLEGED RAIN AND STORM ON THE NIGHT OF THE 8TH MAY

It is necessary now to examine the question of rain and storm during the night of the 8th May, which I have indicated as a separate section in the Darjeeling chapter There can be no doubt that it constitutes the crux

of the plaintiff's case, as this is supposed to have led to all the untoward developments which resulted in the escape of the second Kumar from the funeral pyre. If the plaintiff's case is true, it was literally a miraculous escape, but the very first circumstance which rendered the miracle possible was certainly not of an exceptional character. At a place like Darjeeling, the season being the month of May, for the weather to be suddenly assuming a violent aspect so as to put people to flight for shelter, is after all not such an extraordinary phenomenon as to be unbelievable.

VALUE OF ORAL TESTIMONY

The question is whether the persons who speak to such weather conditions having actually prevailed on that particular night can be believed.

Oral testimony as to what the weather was like on a given day or at a given hour 25 years ago has in it an inherent element of uncertainty, which no court can possibly leave out of account. "It may be," as De Quincey observes, "that there is no such thing as forgetting possible to the human mind. a thousand accidents may and will interpose a veil between our present consciousness and the secret inscriptions on the mind. accidents of the same sort will also rend away this veil. but whether veiled or unveiled, the inscription remains for ever." It all depends, however, on whether the original inscription was a deeply imprinted image on the tablet of memory, or only a fugitive shadow lightly floating away across the surface like a film of mist.

To carry a dead body to the cremation ground in the valleys of Darjeeling during the dark hours of the night, and then to miss it, while away for a time, driven off the spot by a terrific onset of rain and storm, is an unforgettable experience, and the picture of it in its broad outline is not likely to fade away from the mind, though memory may perhaps unconsciously add a stroke of light here or a touch of shade there.

This is a psychological truth borne out by human experience, and should provide a key to a proper appreciation of the oral evidence on either side regarding the state of the weather on the 8th May, 1909.

EVIDENCE OF DEFENCE WITNESSES

Mr Chaudhuri's complaint is that the learned judge ignores the large body of evidence on the point coming from the defendants' witnesses, to which he gave the following references —

D IV 7, Bibhabati Devi (Vol 12, p 205, ll 20-21)

"On Monday we started from Darjeeling after mid-day. On the preceding Saturday night there had been no rain or storm."

D IV 380, Satyendra Nath Banerjee (Vol 16, p 430, ll 42-43)

"On the night of the 8th the weather was fair. There was no rain or storm that night."

D IV 365, Dr Ashutosh Das Gupta (Vol 16, p 244, ll 30-31)

"On the night on which the Kumar died the weather was good. There was no storm or rain."

Shyamadas Banerjee (on commission), (Vol 1, p 258, ll 1-2)

"There was no storm or rain in the morning of that day The night before that day was also clear "

Rajendra Nath Sett (on commission), (Vol 1, p 302, ll 27-30)

"The day on which Kumar's body was burnt, that was fine weather The night before that day was also a fine one If there was any trouble, I would have remembered that If I were wet, then I would have remembered it "

Mohendra Nath Banerjee (on commission), (Vol 1, p 324, ll 24-25)

"The day (9th May) was similar to this, it was very clear and bright I was awake from the evening up to till 1 A.M. at night The weather was very fine up to then "

Kalpada Moitha (on commission), (Vol 1, p 350, ll 4-5)

"There was very fair weather on that day (9th May), as fair as today "

Jagat Mohini (on commission), (Vol 1, p 283, ll 14-17)

"The night in which the Kumar died was a very clear night We were sitting up with the dead body throughout the whole night The next day when the dead body was burnt was a very clear day It was a day as clear as this day "

Anthony Morel (on commission), (Vol 2, p 369, ll 14-17)

"The day on which the dead body of the Kumar was burnt was fair The day was fair, there were no clouds and no rains The night on which the Kumar died was also fair There were no storms and no rains "

D W 140, Bepin Behari De (Vol 14, p 492, ll 36-37)

"On the night of the Kumar's death the weather was good There was no storm or rain "

D W 290, Birendra Chandra Banerjee (Vol 15, p 321, l 17)

"The weather was very 'fair' on Saturday night "

Calvert (on commission), (Vol 2, p 204, l 33—p 205, l 2)

Q—Do you remember what the weather was like on the night the Kumar died?

A—To the best of my recollection it was fine up to the time when I went to bed

Q—Would that be before or after the Kumar's death?

A—Some time after the Kumar's death when I went home—after the usual condolences to the members of the family

Q—You do not know of it having rained that night?

A—No "

NO PARTICULAR REASON FOR REMEMBERING

On the defendants' evidence it does not appear that there was any particular circumstance at the time or later to have directed attention to the condition of the weather If, as the plaintiff says, there were rumours

shortly after the Kumar's supposed death regarding a litch in the cremation, that might perhaps have made it important to remember whether there was any storm or rain which could have produced such a consequence, but as we know, the story of such rumours is strenuously denied by the defendants. So far as the Kumar's own people are concerned, the fact of his death, under circumstances of such tragic suddenness as they allege, at a place like Darjeeling, far away from his home, may no doubt be supposed to leave a lasting impression on their minds, but is it likely that during the most anxious hours they would be passing through on that fateful night, according to their story, watching the Kumar in his last gasp, their thoughts would turn to the condition of the weather outside rather than to that of the patient within? The defendants do not suggest that if there was rain or storm that evening, there were any incidents in the course of the Kumar's illness at the time which would make them remember the fact none of the inmates of "Step Aside" even say that if it had rained, they were not likely to forget. The statements these witnesses make are no more than a bare denial of the plaintiff's case, and this is in fact carried to the extent of outsiders like Shyamadas Banerjee, Rajendra Nath Sett and Tinkari Mukerji, who must have been sleeping peacefully in their beds at least up to 1 A.M., being made to say that it was "fine" weather through the whole of that night.

DIFFERENCE IN THE CASE OF PLAINTIFF'S WITNESSES

On the other hand, the plaintiff's witnesses who speak of rain and storm, not only those who were present at the *sasan*, but the persons who saw the evening procession, have this in their favour that the rain and storm are inseparably connected in their minds with one of the strangest events within their knowledge or experience. The outstanding fact which would indelibly impress itself on their memory would be that of a sudden heavy squall as being directly responsible for all the extraordinary sequel they witnessed or heard of, and no lapse of time could efface their recollection of it, though the very intensity of the impression might not unnaturally perhaps make them magnify the severity of the weather on the occasion, in trying to recall the fact 25 years later.

In my opinion, in weighing the oral evidence on both sides regarding the rain and storm, the scales must inevitably turn in favour of the plaintiff, and I do not think it would be right to make too much of any exaggerated statements that may have been made by his witnesses as regards the precise duration or extent thereof.

I have already referred to a large body of witnesses on the plaintiff's side who give direct evidence on the point, but there are a few others to whose evidence it is also necessary to call attention as equally cogent and important.

PLAINTIFF'S EVIDENCE WEIGHED

The first is Madhu Sudan Mukherjee, P.W. 807, (Vol. 9, pp. 316-318), who is supposed to have made a previous statement before a magistrate at Patna (*Appendix Volume*, p. 206) as already noticed in connection with the question of one or two *sasans* at Kagjhora. He was an assistant in the Political Department of the Government of Bengal and moved up to Darjeeling with

the Secretariat during the summer of 1909 (April to June) He was staying with some fellow officers at a mess in Bhutia Bustee down Rangit Road, and specifically names Anukul Chatterjee *alias* Fatik (*Vol. 9, p 316, l 20 and l 38*) as one of his mess-mates who lived in the same room with him He speaks of Suryanarain Mukherjee coming to the mess one evening after dusk to call Anukul to carry the dead body of the Kumar to the cremation ground Anukul, it is said, went, returning late at night, it might be midnight or later Witness got up from his sleep when Anukul returned, and found him "drenched from head to foot" (*ibid, ll 36-37*) Questioned in cross-examination regarding his previous statement before the Deputy Magistrate, he said

"The only question I remember is that he asked me if it rained on that day, and 'I' said that Anukul Babu came back drenched from head to foot" (*ibid, p 317, ll 15-16*)

Asked if he had stated that Anukul came back probably at dusk or just before dusk, he said

"I remember he came back at night" (*ibid, l 30*)

It was put to him that Anukul did not live with him at Bhutia Bustee but in the Cutchery Building, and he replied in the negative (*ibid, p 318, ll 7-9*)

STORY ABOUT ANUKUL CHATTERJEE

If this story of Anukul Chatterjee coming back to his mess at night "drenched from head to foot" is true, there can be no doubt that it gives most convincing support to the plaintiff's case Mr Chaudhuri's attempt to falsify this evidence by referring to the so-called previous statement of the witness is futile, for, for reasons already explained, I entirely agree with the learned judge when he says that this statement is neither proved, nor purports, to be his (*Vol 18, p 362, ll 18-19*)

The defendants seem to have been anxious from the beginning to annex Anukul Chatterjee for the morning procession, he being a man of Uttarpara, the place from which Satyendra hailed, but unfortunately, it appears, their anxiety over-reached itself, producing different stories from different witnesses

CONFLICTING DEFENCE VERSIONS

Their very first witness Shyamadas Banerjee (*Vol 1, pp 263-278*), also a man of Uttarpara, said that as soon as he received the news of the Kumar's death from Satyendra at about 1 or 1-30 in the night, he at once started for "Step Aside" with "another boy named Anukul Chatterjee", who was staying with him at Cutchery Building (*ibid, p. 256, ll 13-14*) There were several other Secretariat clerks staying there at the time, but he gave the news only to Anukul Chatterjee and two others, who, it so happens, have all died since He did not ask any of these persons to go for the cremation, as such a thing was "impossible" at a place like Darjeeling at that hour of the night Anukul, however, went with him, and appears to be the only one who did so according to the witness (*ibid, p 269, ll 11-17*)

Rajendra Nath Sett (*Vol 1, pp 300-313*), the next Uttarpara witness, who was examined only a few days later, would not, however, give Shyamadas Banerjee the credit of taking along this young man to "Step Aside" He

got the news of death the same night at the Sanitarium, and although not asked by Satyendra to do so, thought it right to call at the Cutchery Building on his way, presumably because "some men of Uttarpara used to live there" (*ibid*, p 301, ll 13-16). He cannot say exactly how many came out from this mess, probably six or seven did he remembers, however, Shyamadas was not one of them, but mentions, without naming, "*that tall man*", an acquaintance of his (*ibid*, p 303, ll 25-30), whom he referred to earlier as "another tall gentleman of Uttarpara who worked in the Secretariat", and who is supposed to have brought down, with Shyamadas, the dead body from upstairs at "Step Aside" (*ibid*, p 301, ll 33-35)—thereby clearly identifying him as Anukul Chatterjee, it not being the defendants' case that any other Secretariat clerks belonging to Uttarpara were at "Step Aside" that morning.

According to Rajendra Nath Sett, two other persons from the Sanitarium, Bijoy Krishna Mukherjee (*Vol 1, pp 314-321*) and Tinkari Mukherjee (*Vol 1, pp 433-461*), went along with him that night (*Vol 1, p 301, ll 12-15*), but none of them speak to picking up Anukul Chatterjee on the way, Tinkari Mukherjee in fact stating that he went the following morning (*ibid*, p 434, ll 16-17 and l 22).

Mohendra Nath Banerjee (*Vol 1, pp 323-346*), another defence witness, examined at about the same time, gives an entirely different version. He was also an inmate of Cutchery Building, and his story is that he returned to his mess very late that night from an invitation, and heard of the report which Shyamadas Banerjee had received of the Kumar's death, but he did not feel disposed to stir out at that hour. Shyamadas Banerjee came back the next morning, when about 8 of them went from there, including Anukul Chatterjee, whose name he remembers (*ibid*, p 323, ll 20-34), though somewhat inconsistently he says later that Anukul Chatterjee was one of those who had gone to "Step Aside" that morning before him (*ibid*, p 327, ll 7-10).

Yet another defence witness, Kali Pada Moitra, (*Vol 1, pp 347-362*), who received the news of death from Shyamadas Banerjee "very early in the morning" (*ibid*, p 348, ll 9-11), speaks only of having noticed Anukul Chatterjee at "Step Aside" bringing down the dead body from upstairs (*ibid*, p 348, ll 34-36).

The next defence witness from the Cutchery Building, Kanai Ram Mukherjee (*Vol 1, pp 363-375*), however, proved distinctly disappointing. He gave the names of several persons who were staying at this mess, such as Mohendra Nath Banerjee, Lal Behary Mukherjee, Kali Pada Moitra and Nalindra Nath Ghose, but did not remember "whether or not any one by the name of Anukul Chatterjee used to stay there", adding "most probably he did not stay there" (*ibid*, p 363, ll 26-30). According to him Anukul and Shyamadas came round in the morning at about 6 or 6-30 to call people for the cremation, and the witness was one of those who went (*ibid*, p 364, ll 21-24).

It will be seen that the whole foundation of this body of defendants' evidence respecting Anukul Chatterjee, which was all given on commission, was the fact of his staying at the Cutchery Building, and not at the Secretariat clerks' mess in Bhutia Bustee, as deposed to by P W 807, Madhu Sudan Mukherjee, giving his evidence in Court.

SUPPOSED CORROBORATION BY KALIDAS PAL

Mr Chaudhuri sought to obtain corroboration of this fact from the evidence of Kali Das Pal, who was in fact the first witness on the plaintiff's

side belonging to the Cutchery Building group and was examined on commission at a fairly early stage in the case (*Vol 2, pp 127-132*) It will be remembered that Mr Chaudhuri accepts the evidence of this witness, except only as regards the time when the news of death is supposed to have been received at this place, which counsel suggests he put by mistake too early as 9 or 9-30 P M (*ibid, p 127, ll 26-33*), though he had mentioned the very same hour in his previous statement to Lethbridge in the course of the Landsay enquiry (*ibid, p 128, ll 5-9, see also Vol II, p 243 and p 252*)

Kali Das Pal does not mention the name of Anukul Chatterjee in his examination-in-chief, and it is not shown that he had given it in his previous statement either The witness did not go to the cremation even the following morning, but says that his friends went (*Vol 2, p 128, ll 17-19*), upon which follows this cross-examination

"Among my those friends, Mohendra Nath Banerjee was also there I have my doubts as to whether late Lal Behari Mukherjee attended the cremation But Mohendra Nath Banerjee did attend the cremation " (*ibid, ll 21-23*)

Then comes this answer in the very next line

"I do not remember if Anukul Chatterjee attended the cremation". (*ibid, l 24*)

This is the only reference made by the witness to Anukul, and I for one fail to see how this can be construed as an admission that Anukul was one of the "friends" who were stopping at Cutchery Building The answer was obviously given to a question as to whether Anukul attended the cremation, without any reference to the place where he was staying, and this will be evident from the fact that in respect of several other persons about whom he was asked immediately afterwards, such as Kshetra Mohan Bhattacharya, Kanai Mukherjee, Shyamadas Banerjee and Kali Pada Moitra, he was expressly questioned whether they were living in the Cutchery Building at the time or not

PANCHANAN MOITRA'S STORY

The defendants afterwards called a witness, Panchanan Moitra, D W 113, to prove that Anukul Chatterjee did not live at Bhutia Bustee in May, 1909 (*Vol 14, pp 364-372*) The witness admits that he came to give evidence only for this purpose One Romesh Babu, a perfect stranger to him, comes to him one day at the Secretariat and asks if he had gone to Darjeeling in 1909 On his saying "yes", he is next asked if he stayed at "Lama Villa", that being the name of the Bhutia Bustee mess He says, "yes" again, and feels curious to know why he is being put these questions He is then asked "Did Anukul Chatterjee stay there?" He says "No" This was practically the whole of the conversation between the two

"Q—Did he ask about Anukul Chatterjee alone?

A—Cannot remember

Q—Did he ask about Madhusudan Mukherjee?

A—Perhaps he did, I remember now These two persons—I remember now He asked about nobody else " (*ibid, p 367, ll 6-21*)

The witness must have had a wonderful memory. He said there were 8 clerks staying at this place at the time, of whom he gave the names of four, besides himself—the other three he did not remember—"so many trips occur, how could anybody remember?" (*ibid*, p 364, ll 28-33). Precisely, but he still remembered enough to be able to say that Anukul Chatterjee was not there in the first trip of 1909! The witness knew Rajendra Sett of Bally, but was quite innocent of the name of Satyendra Nath Banerjee—he did not even know that Satyendra had any connection with this case (*ibid*, p 366, ll 1-15)! He had very short evidence to give, but still it took more than an hour to give his statement to defendants' lawyer Pankaj Babu (Pankaj Kumar Ghose, Advocate). It is a bit disconcerting to find, however, that giving evidence only two days later, he did not remember if the lawyer asked him whether Madhu Sudan Mukherjee had been living with him at Bhutia Bustee in the first trip of 1909 (*ibid*, p 366, ll 30-37).

Speaking for myself, I find it difficult to place any reliance on the negative recollection of such a witness, notwithstanding his claim that his memory "may fail on minor points but not generally on important points" (*ibid*, p 368, ll 22-23). He had given a statement to Lethbridge, but it does not appear he then mentioned any of the "important points" which he afterwards came to give in his deposition in court.

In my opinion, it is not established that Anukul Chatterjee was living at the Cutchery Building mess in May, 1909, and in concurrence with the trial judge, I am inclined to believe Madhusudan Mukherjee, whose recollection is in fact bound up with a specific incident, which can hardly be predicated of the witnesses on the other side.

CORROBORATION OF PLAINTIFF'S VERSION

His evidence receives substantial corroboration from another witness of the plaintiff, Jnanendra Nath Banerjee, P W 838, (*Vol 9, pp 426-431*), who lived at the time at Balen Villa No 1 at the back of the Government Pleader's house, and was an active member of the Amusement Section of the Club at the Nripendra Narain Public Hall, where he would be present almost every evening till about midnight and sometimes later. He remembers the evening when somebody came there at about 7-30 or 8 p.m. with the news of the Kumar's death, to call men for the cremation—he did not go, as he was due to leave for Kurseong the next morning for the Kakina *sradh*. He has good reason to recall this fact, because of an interesting incident which happened that night. As he was changing on return from the club before retiring to bed, he saw Anukul Chatterjee whom he knew from before, climbing up some steps to get into a road higher up in front of his house. Anukul saw him, and called out "Jnan Da". He went out and found him "very much drenched", and asked where he had been at that hour of the night.

"Q—What did he say? (*Objected to Allowed*)

A—He said he had gone to cremate Bhowal Kumar, but his body was missing and so he was coming back."

He adds

"I did not believe him and thought he was talking nonsense and asked him to go home.

I have no independent recollection of there being a rainfall that night" (*ibid*, p 427, ll 1-15).

The cross-examination was directed to showing that he had not given this story in his statement to N K Roy on the 2nd June, 1921 (*Ex Z(43)*, Vol II, p. 235). As will be seen, however, this statement consisted only of answers to such questions as had been put to him. At that stage, it will be remembered, no questionnaire had been prepared, neither the one of Rai Bahadur Sasanka Coomar Ghose (Vol I, p. 240), nor that of R C Datta (*ibid*, p. 246), and still it was sought to mislead the witness by suggesting that he had been put the specific interrogatories in the later questionnaire. It is not surprising that the witness was in fact misled, and attempted an explanation by saying that he did not mention the incident in answer either to Q 8 or to Q 9, because the fact of Anukul having gone to the cremation was not within his personal knowledge (Vol 9, p. 428, ll 21-26 and ll 29-34). Counsel taunted him with giving a lawyer's excuse because what Anukul said was "hearsay" (*ibid*, ll 27-28), and in fact asked if he had read the law (*ibid*, l 35). All this taunt notwithstanding, the evidence of this witness, however, remains wholly unshaken, and I see no inconsistency between his present deposition and his previous statement. Mr Chatterjee admits that if Anukul Chatterjee was living at the Cutchery Building, and not at Bhutia Bustee, he would not be passing Jnanendra Nath Banerjee's house.

DEFENCE CASE GIVEN AWAY BY THEIR WITNESS—FAKIR ROY

Long before Madhu Sudan Mukherjee came into the box, Fakir Chandra Roy (Vol 3, pp 1-15), examined by the defendants on commission, had already given away their case regarding Anukul Chatterjee. Fakir Chandra Roy, it will be remembered, had been cited by the plaintiff as early as the 26th February, 1931, and was in fact mentioned by Sitanta Kumar Bagchi, who gave evidence on the 26th and 27th June, 1932, as one of the persons present at the evening cremation. Quite unexpectedly, however, he was taken by the defendants before a Deputy Magistrate at Darjeeling on the 19th September, 1932, to give a statement on their behalf (*Ex Z(364)*, Vol II, p. 266), and then produced as a witness before a Commissioner on the 16th October following. The object evidently was to falsify the evidence of Sitanta Kumar Bagchi by getting him to say that he did not go to the cremation ground at all, whether at night or during the day. In this they succeeded, for he said he merely saw the morning procession between 9-30 and 11 A.M. and did not attend any cremation (Vol 3, p. 2, ll 9-17), but they were evidently not prepared for what he gave out about Anukul Chatterjee in cross-examination. He was asked if he had any talk with Anukul about the Kumar before he saw the procession, and he said:

"Whether it was before or after—that I do not remember, but that Anukul Babu told me that *he went to burn the Kumar the night before*. For that reason he felt pain in hands and feet and all over his body. I remember ("think" is not a correct translation) Anukul Babu told me this" (*ibid*, p. 7, ll 16-22).

This led to a remarkable re-examination which only served to bring out that his conversation with Anukul gave him the idea that he had gone to the cremation ground "probably" between 10 or 12 o'clock at night (*ibid*, p. 14, l 13).

"INCREDIBLE" RE-EXAMINATION

The cross-examination also elicited from the witness a piece of significant evidence regarding the weather that there was rain and storm in the evening preceding the day he saw the funeral procession—just like the *Kal-Baisakh*, (or the familiar Nor'wester, typical of the Bengali month of Baisakh, April-May), (*ibid*, p 8, ll 17-22) Then followed another bit of "incredible" re-examination, as the learned judge puts it (*Vol 18, p 368, ll 22-25*)

"Q—You spoke of *Kal-Baisakh* in your cross-examination In which month or months does the *Kal-Baisakh* take place?

A—From the end of March to the first week of May

Q—When there is rain and storm of *Kal-Baisakh*, does it take place all over Darjeeling? (*Objected to*)

A—Yes, it takes place all over Darjeeling

Q—Because the death of the Kumar took place during the *Kal-Baisakh* time, you said that there was rain and storm from the evening till 9 o'clock at night on the night preceding the day of the procession, or after such a long time you clearly remember that rains and storm did actually take place on the night preceding the day of the procession? (*Objected to*)

A—I have no recollection

Q—Because it was the season of *Kal-Baisakh* you said that there might have been rains or storm on the night preceding the day of the procession? (*Objected to*)

A—Yes, it was because it was the season of *Kal-Baisakh*" (*Vol 3, p 15, ll 5-19*)

This was not re-examination at all, but was really in the nature of a cross-examination, as Mr Chaudhuri himself had to concede, and the defendants actually put to the witness his previous statement to contradict him (*ibid*, p 15, ll 22-25) In my opinion, the whole of this re-examination should be expunged as utterly inadmissible, and if that is done, his evidence regarding the rain and storm stands As regards his alleged conversation with Anukul Chatterjee about which he spoke in cross-examination, strictly this is not evidence, but as the learned judge points out, the defendants themselves helped to establish the fact of the conversation by eliciting its content (*Vol 18, p 368, ll 25-37*)

Mr Chaudhuri's suggestion was that since the witness gave his statement to the Deputy Magistrate, he must have been got at by the plaintiff otherwise, he said, such a direct question could not have been put to him in cross-examination regarding Anukul Chatterjee as was in fact done But learned counsel forgets that the plaintiff had cited Fakir Chandra Roy as a witness long before, and his name was also mentioned by Sitanta Kumar Bagchi, and the plaintiff might well be supposed to have known from him the facts which he was in a position to prove If one is to judge from surrounding circumstances, the credit for getting at the witness must go to the defendants, and they have none but themselves to thank for the disaster he brought on them which more than counteracted the little service they had out of him

EVIDENCE OF SUSILA SUNDARI DEVI

Reference may now be made to the evidence of Susila Sundari Devi, P W 1016, (*Vol. 11, pp 516-521*), the lady whose brothers Jatindra Chandra Chakravarti, P W 947 (*Vol 10, pp 418-424*) and Basanta Chakravarti, since deceased, are said to have gone to the evening cremation, and one of whose sons Sailendra Kumar Kusari has also given evidence for the plaintiff on commission (*Vol 11, pp 329-333*) Her husband, Raj Kumar Kusari deceased, is supposed to have given a statement to N K Roy on the 2nd June, 1921, which has been put in by the defendants (*Ex Z (340) (a), Vol II, p 233*), though it is not clear how this is evidence, merely because his son Sailendra Kumar Kusari proved his signature on it (*Vol 11, p 331, l. 30 and p 332, ll 8-9*)

Susila Sundari's story is that her brothers returned from the cremation ground at about 1-30 or 2 A M in the night, their clothes all wet, and reported the missing of the dead body in the rain and storm for which it could not be cremated In cross-examination she said, giving the time by guess, that the rain and storm which was very heavy began at about 10-30 or 10-45 P M, and lasted certainly for an hour and a half (*ibid, p 520, ll 1-8*) She heard the next day of a funeral procession of the Kumar, but heard also that it was a "faked" procession, as the body carried in it was a body taken from the Victoria Hospital (*ibid, p 520, ll 29-31*)

She gives some useful information about the nurse Jagat Mohini, who is said to have come to her house once at the birth of her fourth son Birendra, and told her at the time that she was a Kayastha, since turned Christian (*ibid, p 518, ll 1-4 and l 13*) She confirms the evidence of her brother Jatindra (*Vol 10, p 421, ll 5-14*) that Jagat Mohini was not the wife of Rajani Kanta Chakravarty of Shologhar, who was their family priest (*Vol 11, p 518, ll 15-16, and ll 28-29*)

Incidentally, she mentions that her husband died at Darjeeling at night at 1-30 A M, and his body was removed to the *sasan* before dawn, though it was raining at the time, and she says this was done for fear of a *bashi mairi*,—the custom which only excited Mr Chaudhuri's ridicule

In my opinion, the evidence of this lady remains wholly unshaken in cross-examination, and it is indeed difficult to see why a respectable Hindu widow of her age and position should come to perjure herself in open court for no conceivable reason Mr Chaudhuri suggests that her evidence is wholly contradicted by her husband's statement (*Vol II, p 233*), and that is why it is said she stated in her examination-in-chief that she had not told her husband what she had heard from her brothers regarding their experiences in the *sasan* in connection with the Kumar's cremation (*Vol 11, p 517, ll 26-27*) To say the least of it, it is doubtful if the statement is evidence at all, but apart from this, the comment itself seems to be disingenuous, for the witness never tries to conceal the fact that her husband heard the story which her brothers were relating she distinctly says that she did not tell him as he could hear it (*ibid, p 519, ll 21-25*), and further that her brothers spoke to her husband that very night (*ibid, p. 519, ll 22-27*) Then, one fails to see wherein lies any possible contradiction between the lady's evidence and her husband's statement

SAILENDRA KUMAR KUSARI

Her son Sailendra Kumar Kusari (*Vol 11, pp 329-333*), who also speaks to the incidents of that evening as far as he recollects, was a boy of only 12 or 13 years at the time, but he gives a special reason for remembering the fact A Brahmin Raja of their part of the country had come to Darjeeling for a change and died all on a sudden, and the death was a surprising one, because the body was not cremated, nor could it be found (*ibid, p 330, ll 8-12*) Also, one Kumar of Bhowal had come to Darjeeling a few years before and lived in a house next to theirs, and his father had an intimate acquaintance with the family (*ibid, ll 4-7*) This last fact about the previous visit of a Bhowal Kumar to Darjeeling is indeed confirmed by one of the defendants' documents (*Ex Z(252), Vol II, p 250*), a statement of Matilal Ganguli before a Deputy Magistrate (*ibid, ll 12-16*), and was also admitted before us by Mr Chaudhuri

STORY OF RAINFALL RECORDS

The question now to be considered is whether the whole mass of evidence on the plaintiff's side regarding rain and storm on the night of the 8th May is out-weighed by the rainfall records on which the defendants rely It appears that there were at least four rain gauges maintained at Darjeeling in those days, one at St Paul's School, another at St Joseph's College, a third at the Botanical Gardens and the fourth at the Municipal office, the readings at St Paul's being taken for the Government Meteorological Department and published in the official weather reports in the Calcutta Gazette St Paul's School is at the highest level, being located at Jalapahar which is higher than the Observatory Hill its height is given by P W 969, Sashi Mohon Das, as 7,800 feet (*Vol 11, p 102, ll 28-30*) St Joseph's College is at North Point on Cart Road as it turns east towards Lebong, and according to D W 12, Rev Father Peel, it is at an altitude of 6,300 to 6,400 feet, and about 500 feet lower than the Market Square, its distance by road being $1\frac{3}{4}$ to 2 miles from Lebong and $1\frac{1}{4}$ to $1\frac{1}{2}$ miles from the Bazar (*Vol 12, p 392, ll 33-36 and p 398, ll 16-17*) According to P W 969, Sashi Mohon Das (*supra*), it is 10 or 15 feet higher than the Darjeeling Railway Station, which is about 7,000 feet high, the same as the Market Square (*Vol 11, p 102, l 29, and p 103, ll 3-5*) The cremation ground is said to be at a height of 4,500 feet (*ibid, p 102, ll 30-31*) The Botanical Gardens are on Victoria Road which is the western boundary, the Market being to the north-east of it and at a higher level (*P W 118, Vol 14, p 420, ll 24-26*) The Municipal office at that time was also on Cart Road and at the same level as the Market

In addition to these records, Mr Chaudhuri relies on Dr B B Sarkar's diary, *Ex Z(215) (Vol I, pp 247-254)*, in which a note appears to have been made about the general condition of the weather from day to day, though there is no evidence as to when or in respect of what period of the day the note was made all that Dr Sarkar's son who proves the diary says is that his father usually would take his evening meal at 9 P M and retire to bed at 11 P M (*Vol 15, p 417, ll 16-17*)

Rainfall readings used also to be taken at Planters' Club, but these have not been produced it will be remembered that Manmatha Nath Chaudhuri, P W 986, who was then Head Clerk of the Club, said that some years ago,

two Bengalee gentlemen had called at the Club and taken away the book for 1909 (*Vol 11, p 279, ll 28-38*)

Mr Chaudhuri's point is that none of the rainfall records which are in evidence show any rain on the night of the 8th May

Having regard to the testimony of the plaintiff's witnesses, the record at the Municipal office or at the Botanical Gardens might have been useful evidence on the defendants' side, the Municipal office, as already stated, being situated on the same level as the bazar, and the Botanical Gardens at a lower level, though not so low as the *sasan*. The Municipal register (*Ex 469, Photo Album, Vol I, p 27*), however, bears evident marks of tampering, and the learned judge was consequently unable to place any reliance on it, (*Vol 18, p 374, l 28—p 375, l 2*). As regards the Botanical Gardens register (*Ex Z(207), Vol I, p 396*), he held that it was very irregularly kept and that the page for the month of May, 1909, at all events, was fabricated (*Vol 18, p 375, ll 3-27*).

As for the other two records, the learned judge was apparently not satisfied that they tallied with each other, or that the absence of any record of rain at either of these places would necessarily exclude rain in other parts of Darjeeling (*Vol 18, p 374, ll. 1-8 and p 376, ll 9-11*).

SYSTEM OF RECORDING

In order to be able to follow the readings in the various registers, it is necessary to know something about the system which was in force at these observatories for making the record. There is the evidence of only two witnesses on the point, that of the Rev Father Peel, DW 12 (*Vol 12, pp 392-400*) about St Joseph's College, and of Bahadur Sing, DW 118 (*Vol 14, pp 420-425*) about the Botanical Gardens. As regards the other records, the documents are left to speak for themselves.

The St Paul's register, from which an extract only for the month of May, 1909 has been produced by the defendants (*Ex Z(328), Photo Album, Vol II, p 41*), shows that readings were taken three times a day, namely, at 8 A.M., 10 A.M. and 4 P.M., and the final entry would be made in the last column at 8 A.M. every morning showing the total rainfall of the previous 24 hours: this total would include the 8 A.M. reading of that morning and the 10 A.M. and 4 P.M. readings of the previous day. It seems to be quite clear that the date against which the entries are shown is the date on which the record is actually made, and this in fact necessitates the explanatory note that the entry of the total in the last column represents the total of 24 hours commencing from 8 A.M. of the previous day.

As regards the St Joseph's register, this is what the Rev Father Peel says

"The readings were kept twice daily up to 1907—at 7-30 A.M. and 8-30 P.M., and after that only at 7-30 A.M.

The rainfall read on the morning, say, of the 3rd, would be entered as belonging to the 2nd, but the other data, e.g., barometer, thermometer would mean as at the time of the record" (*Vol 12, p 392, l 39—p 393, l 5*).

Mr Chandhuri would read the words "entered as belonging to the 2nd" to mean that the reading taken on the morning of the 3rd would be entered under date the 2nd, in other words, according to him, the entry of rainfall in this register appearing under any date, would represent the rainfall of 24 hours *commencing* from the morning of that day. This, however, is contradicted by the witness' own statement which follows

"Each entry of rainfall means entry 'for 12 *past* hours up to 1907, and for 24 hours after ('up to' is a misprint) 1908, that is, 24 *hours next before the time of entry*' (*ibid*, p 393, ll 8-10)

In my opinion, the learned judge put the correct interpretation on this evidence, when referring to the figure for the 12th May he said

"Father Peel explains that this means the figure entered at 7-30 A M on the 12th, which means rain either on the 11th (*i e*, after 7-30 on the 11th), or on the 12th before 7-30" (*Vol 18, p 374, ll 5-8*)

This would in fact be the common-sense view to take, for, there would be no point in ante-dating the record by a day, particularly as Father Peel says that the barometer and thermometer readings would be entered "as at the time of the record"

The system in vogue at the Botanical Gardens was also the same, as explained by Bahadur Singh, D W 118, who says

"The figure for rainfall taken at 8 A M to-day means figure for rainfall between 8 A M of the previous day and 8 A M of to-day. Since I entered service the figures were recorded thus—every day at 8 A M" (*Vol 14, p 421, ll 19-21*)

So far as the Municipal record is concerned, there is not only no evidence as to what system was followed, but nothing to show at what time of the day the readings were taken, and yet it will be recognised that this is an important fact without knowing which no proper comparison is possible with the other records

PLAINTIFF'S CHARGE OF TAMPERING WITH MUNICIPAL RECORD

The trial judge, as I have said, was unable to come to any conclusion regarding the Municipal register, but Mr Chatterjee on behalf of the plaintiff has contended before us that the original entry in this record, before it was tampered with, showed rainfall on the 8th May, 1909. The tampering could not be denied, as the document bears *ex facie* unmistakable signs of it, but either side accused the other of having been concerned in this villainous transaction. The facsimile of the document to be found in the *Photo Album, Vol I, p 27*, shows an alteration in the entry of the intervening date between "3-5-09" and "14-5-09"

The plaintiff's case is that this date as originally entered was "8-5-09", or it may be, "9-5-09", and that the figure "8" or "9" was subsequently altered to "13", whereas the defendants suggest that the original entry was "13" which it was sought to alter to "8", but that the attempt having failed, the figure "13" was restored and written again at the top. In order to appreciate the arguments of either party, it is necessary to note a few

of the consecutive dates appearing above and below the disputed entry in this register

1-5-09, 2-5-09, 3-5-09, 13-5-09 (disputed), 14-5-09, 15-5-09

COUNTER-CHARGE BY DEFENDANTS

Mr Chaudhuri tries to meet the plaintiff's case by showing that both St Paul's and St Joseph's record rainfall at Darjeeling on the 12th May, — 35 inches at the former under date the 13th May (*Photo Album, Vol II, p 41*) and, according to his reading of the system of recording, 300 millimetres at the latter under date the 12th May (*Vol I, p 393*), and that for the same day, the Botanical Gardens register also shows rainfall of 57 inches (*Vol I, p 396*), and Dr Sarkar's diary "hailstorm at night" (*Vol I, p 249*), and by arguing from this that there must be some record of the rain in the Municipal office rain-gauge as well, and he suggests that it would be recorded under date the 13th May, every probability thus pointing to the original entry being "13", this of course assumes that the St Paul's system of record was followed here, otherwise, it is said, there would be no record at all of the rain

Secondly, Mr Chaudhuri points out that it would not avail the plaintiff at all if the original entry was "8", for, if there was rain on the 8th May, it would be shown under date the 9th, assuming again the same system of recording as at St Paul's

Mr Chaudhuri's argument would be not without force, if it could be shown—

- (i) that the register produced for the Botanical Gardens was an authentic record, and
- (ii) that it could not rain at St Paul's or at St Joseph's without raining at the same time at the Botanical Gardens or the Municipal office

If (i) is established, this by itself would be sufficient for the purposes of the defendants' case, as the Botanical Gardens record shows no rain on the 8th May, and a reference to the Municipal register would be wholly superfluous, the Botanical Gardens being at a much lower level than the Municipal office and nearer the *sasan*. So far as (ii) is concerned, the only support for such a proposition comes from Father Peel, but his evidence at its best is that of a mere meteorological expert, and it is no disparagement to him to say that it gives forth no certain sound

FATHER PEEL'S EVIDENCE

I am not at all sure that it will serve any useful purpose to discuss this evidence at length. In the first place, there is no evidence that all the data on which he purported to base his opinions were necessarily accurate, secondly, as he himself admitted, there were certain hypothetical factors, or "probabilities", as he termed them, which he had to take into account (*Vol 12, p 399, ll 7-19*). Speaking from such knowledge as he had of the inexact science of meteorology, he did not lack the conviction to assert that a phenomenon like Chowringhee, a well-known thoroughfare in Calcutta, being wet up to a point and then dry up to the "point of demarcation" is a thing "meteorologically impossible" (*ibid, p 395, ll 12-14*), though this is a fact which must be within the common experience of every inhabitant of this city. He again went so far as to say that the weather conditions

of Darjeeling in the month of May must be the same every year (*ibid*, p 397, ll 12-13) though it may be pointed out that the defendants' own record, the Botanical Gardens register, shows varying totals of rainfall in this month in different years—9 63 inches in 1909 (*Ex Z* (207), *Vol I*, p 396), 10 15 in 1911 (*Ex Z* (208), *ibid*, p 397), 3 88 in 1912 (*Ex Z* (209), *ibid*, p 398) and 6 36 in 1922 (*Ex Z* (210), *ibid*, p 399)

He was asked in examination-in-chief if there was no rain-fall recorded at St Joseph's and St Paul's between the 5th and the 11th May, could there have been rain within a 10-mile radius? He answered,—certainly no rain at Darjeeling Spur, by which he meant the spur coming down from Ghoom, Katapahar, Jalapahar, Government House, Birch Hill and St Joseph's College (*Vol 12*, p 393, ll 23-29) The next question was, if there was no rain at St Joseph's and at St Paul's between those dates, could there have been rain near Morganstein's house (*i e*, the *sasan* area) and at the Market Square? And the answer was,—not, without being recorded either at St Paul's or St Joseph's (*ibid*, ll 32-35) The conclusion was that any rain at Darjeeling was bound to be recorded at one or other of these observatories (*ibid*, p 394, ll 4-5) As to whether or why such uniformity of rainfall was a characteristic of Darjeeling weather conditions only between the specific dates suggested, he did not choose to explain, but he certainly does not appear to have tested his theoretical conclusions by a comparison of actual readings of the different rain-gauges at Darjeeling over a number of years, or any extended period in the same year, or over any period at all In my opinion, it would be wholly unsafe to rest any certain conclusion on the uncertain basis of what might be no more than mere accidental coincidences for only a number of days

Father Peel himself was obliged to concede that if monsoonish conditions prevailed, there might be possibility of rain at Lebong and Chowrasta without rain at the Bazar or Ghoom (*ibid*, p 397, ll 23-25), and he further admitted that the date of the oncoming of monsoonish conditions varied from year to year (*ibid*, ll 26-28) That such conditions had actually set in at Darjeeling about the 8th May in the year 1909 would appear from the evidence of defendants' own witness Fakir Chandra Roy about the *Kal-Baisakhi*, which has been already referred to

UNCERTAIN CONCLUSIONS

As against this expert evidence, there is lay evidence on the side of the defendants themselves, which tells a different story Calvert, for instance, said "I know in Darjeeling there may be rain in some places and no rain in others" (*Vol 2*, p 222, ll 25-26) Mohendra Nath Banerjee, again, said, "At Darjeeling I have seen that it is raining at a higher level but no rains below, also it is raining below but no rains on the higher level" (*Vol 1*, p 332, ll 24-25) Shyamadas Banerjee also spoke to the same effect "I saw such things at Darjeeling that for a few minutes it was raining at a lower level, and on the upper level it was not raining" (*Vol 1*, p 269, ll 36-38)

An examination of the rainfall registers themselves as they stand reveals so many and such striking discrepancies that it seems to be impossible to predicate with certainty that if it rained at St Paul's School or at St Joseph's College, the rain was bound to be recorded in the rain gauge at the Botanical Gardens or the Municipal office Even during the month of May,

1909, for which the records have been produced, there are at least four dates for which, even according to Mr Chaudhuri's way of reading the charts, the registers at St Paul's and St Joseph's do not tally with each other. Thus, under dates the 23rd, 30th and 31st May, St Paul's shows no rainfall, but rain is recorded in St Joseph's under the 22nd, 29th and 30th May to the extent of 055, 027 and 00 mm respectively, assuming that the corresponding entries would appear in this register under these dates. On the other hand, St Paul's records 43 inch of rainfall under the 24th May, but St. Joseph's shows nil under the 23rd May, if that be the corresponding date.

NO UNIFORMITY OF RAINFALL

Supposing, on the other hand, the system of recording to have been uniform at both these observatories, there are discrepancies to be observed under at least three dates

<i>Date</i>	<i>St Paul's</i> <i>(in inches)</i>	<i>St Joseph's</i> <i>(in millimetres)</i>
4th May	04	Nil
12th May	Nil	300
30th May	Nil	003

It would perhaps be helpful to subjoin a comparative chart of the readings in the four registers for a number of days in the month of May, a double set of figures being given for St Joseph's, the first set under (i) in the table below being on the basis of a uniform system of recording, and the second under (ii) on the assumption that the system was different as suggested by Mr Chaudhuri

<i>Date</i>	<i>St Paul's</i> <i>(in inches)</i>	<i>Municipal</i> <i>office</i> <i>(in inches)</i>	<i>Botanical</i> <i>Gardens</i> <i>(in inches)</i>	<i>St Joseph's</i> <i>(in</i> <i>millimetres)</i>	
				(i)	(ii)
4th May	04	Nil	49	Nil	047
12th May	Nil	Nil	Nil	300	Nil
23rd May	Nil	18	13	Nil	055
24th May	43	46	63	149	Nil
26th May	15	Nil	02	818	005
30th May	Nil	02	Nil	003	027
31st May	Nil	Nil	Nil	Nil	003

A comparative examination of these records, without any assistance towards an explanation from the evidence, also discloses a remarkable degree of quantitative difference between them, the St Joseph's figures expressed in millimetres, if they have been correctly recorded, being strikingly on the

lower side, as compared with the others,—one millimetre, it may be stated, being equivalent to 0.03937 inch, say, roughly $\frac{1}{25}$ th of an inch. Thus, for instance, the heaviest rainfall in the month of May, according to the registers, was between the morning of the 13th and the morning of the 14th, being 3.10 in the Municipal record, 3.50 at St Paul's and 2.61 at the Botanical Gardens, all expressed in inches and shown under date the 14th May, but St Joseph's records only 137 mm against this date, or 5.51 mm, if the corresponding date be taken to be the 13th May.

DR B B SARKAR'S DIARY

Taking Dr Sarkar's diary next, a few dates may be picked out at random to show how it differs from the other records

1st May "fair", 2nd May "misty", 15th May "fair", 16th May "bright, cloudy", 17th May "bright, cloudy", 21st May "fair, bright", but on every one of these dates there is rainfall recorded in the other rain gauges. Then, again

3rd May "rainy morning", but no rain in the Municipal register or at St Joseph's under date the 4th May,

22nd May "slight rain", but nil at St Paul's and nil at St Joseph's on the 23rd May,

25th May "rain, not much", but no rain at the Municipal office on 26th,

30th May "drizzling midday", but no rain at any of the other places on the 31st

In this state of the rainfall records, it is difficult to see how Mr Chaudhuri can contend with any assurance that merely because the observatories at St Paul's and at St Joseph's recorded rainfall on the 12th May (under date the 13th), the disputed entry in the Municipal register must necessarily relate to the rainfall of this day. The probabilities might equally point to there being a record in the Municipal register of rainfall on the 8th May without there being a corresponding record either at St Paul's or at St Joseph's, just as there was rain on the 22nd recorded at the Municipal office the following day, but not at the other two observatories.

DEFENCE THEORY NOT ESTABLISHED

In my opinion, Mr Chaudhuri's theory of uniformity of rainfall all over Darjeeling is discounted by the rainfall records themselves, and I cannot say that the learned judge went "clearly wrong" in holding that rain on the 8th May in the Cart Road and below, particularly in the *sasan* area, was not *ipso facto* excluded by reason of anything appearing or not appearing in these records. As the learned judge points out, "the evidence on the side of the plaintiff is that the rain that occurred on that day fell on the Cart Road or even a little higher, but no witness mentions as high as the Mackenzie Road or the Commercial Row or the Chowrasta" (Vol 18, p 374, ll 20-23)

Mr Chaudhuri was not quite accurate in suggesting that the plaintiff earned the rainfall as high as the Planters' Club or above Commercial Row, neither the evidence of Dhanjit, P W 966 (Vol 11, p 62, ll 28 et seq), nor that of Bhakatbar Roy, P W 988 (*ibid*, p 293, ll 36 et seq and p 294, ll 4, 5

and 11), on which he relied, lends him any support. In any case, as I have indicated more than once, after such a long lapse of time the story of rainfall given by the plaintiff's witnesses ought not to be taken according to the strict letter of their evidence.

SCOTLAND YARD EXAMINATION OF MUNICIPAL RAIN-RECORD

Apart from the considerations set out above, one may perhaps look at the document itself to see that its physical appearance does not seem to support Mr Chaudhuri's conclusion that the original figure in the disputed entry in the Municipal register was "13"

It may be stated that at an early stage of the hearing of the appeal, both sides assented to the document being sent to Scotland Yard, London, for examination by X-Ray and Ultra-Violet Ray processes, in order to discover, if possible, what was the original entry, in what manner it had been altered or tampered with, and the precise sequence in which marks were put upon the paper and obliterated (*Vide Order of the 22nd December, 1938*). The document was accordingly forwarded to the proper quarters, and the Commissioner of Police of the Metropolis of London was good enough to forward to this Court by his letter No 74/For/781 (C 2 B) dated the 27th January, 1939, copies of police reports obtained by him, together with enlarged photographs of the suspected entry, taken under infra-red rays.

Neither party, however, expressed any anxiety to see the report or the photographs after they were received, though they were quite willing that the Court might look at them.

PHYSICAL CHARACTERISTICS OF DISPUTED ENTRY

Quite independently of the report and the infra-red photographs, however, certain physical characteristics are discernible on the face of the document itself, to which our attention was called by counsel on both sides before the papers were despatched to London.

Mr Chaudhuri suggested that the disputed figure must have been "13", otherwise it would be out of alignment with the figures in the succeeding entries. If it had been a single figure like "8" or "9", it should have been nearer to the left vertical line (in red ink).

It will be seen, however,—

- (i) that the entries from after "3-5-09" up to and inclusive of "18-5-09" are in a different hand from the other entries on the page, and the new writer evidently leans more to the right, and
- (ii) that the "1" in the altered figure is much nearer the second digit than in the subsequent entries.

What is more important is that there are no signs of an attempted previous obliteration of the figure "1", the only scoring visible being that of the second figure, whatever it was, and this will be more clearly seen if the paper is held against the light and looked at from the reverse. If it had been a two-digit figure at first, and somebody attempted to alter it in the interest of the plaintiff, the first numeral he was likely to have attacked would be "1", and he would have certainly roughened the surface in the

attempt, and even if it be supposed that he tried to tackle the second figure first, he could not have left the area of the first figure altogether unaffected. The document, however, does not show any traces of an original "1" over which the figure "1" now appearing was written after an unsuccessful attempt at erasure, but shows on the other hand that this figure stands quite intact over a surface already thinned away by mechanical rubbing, making it almost certain that it could not have been there from the beginning. It will be seen that in the process of tampering a small perforation was caused in the paper right through the centre of the second figure.

The outward indications of the document are in fact wholly in favour of Mr Chatterjee's suggestion that the original entry was a figure of one digit, and not of two, the "1" being a subsequent interpolation. As to whether the figure was "8" or "9" or anything else, it is impossible to make out definitely with the naked eye, but whatever it might have been, to my mind the fact that it was a single digit should carry the plaintiff a very long way, if not the whole length of it. It would definitely show that the tampering could not have been done in the interest of the plaintiff. It would be nonsensical to suppose that an agent of the plaintiff, having failed in his attempt to alter "13" to "8" or "9", would take care to restore the original, going the length of writing a clean figure "13" at the top, instead of disfiguring the whole of the entry.

TEXT OF SCOTLAND YARD REPORT

As I have stated, counsel on both sides made their submissions regarding the Municipal Rainfall register without any reference to the Scotland Yard report, the contents of which they did not in fact see, but the report so far as it goes seems to be distinctly in favour of Mr Chatterjee rather than of Mr Chaudhuri, and I might set it out here for what it is worth —

"The document has been examined by various scientific processes at the Metropolitan Police Laboratory, Hendon, who report as follows

"The entry "13-5-09" has been heavily erased mechanically and any underlying figures have been almost completely removed. An examination of the inks present suggests that all the alterations were made some time ago and the diagonal stroke through the erased "13" was written before the document was erased to its present condition. An infra-red photograph shows signs of ink which suggests that there has been a figure "6" underneath the erased figure "3". The photographs enclosed indicate this point.

It is suggested that the procedure was as follows —

A figure, probably "6" was written on the page. This was partially erased and overwritten with a "3". A "1" was placed alongside it. It was then crossed through, a figure "13" put above and then at some later time it was further erased.

"An enlarged photograph taken under infra-red rays gives the best result for examination purposes, and it may be that an attempt was made to erase the "13" before the diagonal stroke was written, after which further erasure occurred.

"Unfortunately in the process of erasure a hole was worn in the paper and it is therefore impossible to say with certainty what the original entry was."

Two facts clearly emerge from this report

- (1) that there was some other figure underneath the erased figure "3", and
- (2) that after this figure was overwritten with the "3", the figure "1" was placed alongside to its left

In other words, neither "1" nor "3" was originally there, and if the report can be relied on, it knocks out Mr Chaudhuri's theory completely. It is unfortunate that the original figure could not be traced with certainty. It was *probably* "6", which does not exclude the possibility of its having been "8" or "9". In the forwarding letter it was emphasised that the examination only suggested the order in which the alterations had been made.

STORY OF PRODUCTION OF RECORD IN COURT

To complete the story about the Municipal rainfall record, it is necessary now to refer to a few facts and dates in connection with the production of this document in court, which are not without significance as throwing light on the conduct of the parties.

Mr Chaudhuri's account of the matter as he gave it in his opening was this. The defendants applied for a certified copy of the rainfall record from the Darjeeling Municipality in November, 1934, and were supplied with one on the 30th of that month, which he said showed no alterations (*Ex Z (373), Vol I p 394*). It appeared that thereafter some surreptitious alterations were made in the record in April, 1935, and the Deputy Commissioner of Darjeeling made some enquiry about it at the time, about which, however, no evidence was allowed to be given. The plaintiff then applied for a certified copy in June, 1935, and he got one with the alterations shown on it, which is printed as *Ex 469 in Photo Album, Vol I, p 26*. Later on, while arguments were proceeding in the trial court, the original record was called for at the instance of the plaintiff and produced in court, and Mr Chaudhuri assented to its being marked as an exhibit as a public record without formal proof.

The account was not only meagre, but misleading. It did not bring out the fact that though the defendants obtained their certified copy on the 30th November, 1934, they did not put it in until the 28th of March, 1936, that is to say, not until the plaintiff had produced his copy on the 11th of March, 1936, after having obtained it only on the 19th February preceding. The only explanation which Mr Chaudhuri attempted to give at a later stage was that it could not be put in because it was not evidence, but that when the plaintiff produced a copy, the defendants produced theirs. It was pointed out that the defendants' evidence commenced only in February, 1935, and shortly thereafter, about the month of April, 1935, when they were preparing to call for the record to prove it, they came to learn for the first time about the tampering from the Municipal authorities. An enquiry was thereupon held, but as already stated, this was not allowed to be proved. Rightly or wrongly, because of the tampering, they took the view that the original record would be useless as evidence.

DEFENDANTS' HALTING EXPLANATION

The explanation seems to be halting in the extreme. The defendants were already armed with a clean certified copy, and if they had no reason to suspect that the original document was not equally clean and free from alterations, all that they need have done was to take out a summons on the Municipality for the production of the record instead of going to the Municipal office to make enquiries. Even after they heard about the tampering, the tampered record might have been produced along with their certified copy, and evidence given regarding the alleged enquiry at a stage when it could not have been possibly shut out by the court as being too late. The mutilated register might have been useless as evidence of a clean rainfall entry, but not certainly of a clean conscience.

Apparently Mr Chaudhuri did not believe that the certified copy obtained by his clients was altogether without value, for he laid great stress on the fact that it showed no alterations, which according to him was almost conclusive proof that at least on the date on which the copy was issued the entry in the register was "13-5-09". The argument, however, seems to be wholly without substance, as it requires no acuteness to see that the copyist might quite easily and naturally have taken the altered figure as the correct one and put it down accordingly in the copy. The reason why the plaintiff's copy was in a different form is probably because he had asked for it in that form.

PLAINTIFF'S CONDUCT A STRIKING CONTRAST

An important fact which Mr Chaudhuri was unwilling to face was that the plaintiff called for and produced the original record, though it bore an alteration which on the face of it went against him. Would that be the conduct of a tamperer?

According to Mr Chaudhuri, the tampering must have been done in or about the month of April, 1935, and done at the instance of the plaintiff. Still it seems to be surprising that the plaintiff should since then have been making strenuous efforts to obtain a certified copy of the document from the Municipality. Some evidence of these efforts is furnished by *Exs 423, 424, 425 and 422 (Vol I, pp 400-403)*. It appears his lawyer Mr Arabinda Guha first applied to the Chairman of the Municipality by a registered letter delivered to him on the 13th June, 1935, and 4 days later remitted to him Rs 3 by money order as cost. Apparently this produced no response, and he had to follow it up with a formal petition with a vakalatnama and court fee stamps on the 20th September following, only to be informed by the Chairman in reply that a vakalatnama "in the proper form" had to be filed and an application made through the court for production of the original on payment of the usual fees. It is idle to speculate what led the Municipality to put these obstacles in the way, whether it was due to a mere anxiety on their part to hide a scandal in their own office, or to the working of an unseen hand trying, if possible, to make inaccessible to the court the traces of its criminal misdeed. The fact remains that not until the 19th February, 1936 the plaintiff got his certified copy, and within three weeks he filed it in court by a petition dated the 11th March, 1936, whereby he also called for the production of the original record from the Municipality (*Vol 17, p 414*). The prayer was allowed and the document was received in court on the 21st March, 1936, and admitted in evidence along with the certified copy.

on the 23rd following (*see orders Nos 1489, 1499 and 1501, Vol 1, pp 112-113*) The document was then inspected by the lawyers on both sides, and the defendants put on record their observations by a petition filed on the 23rd March, 1936 (*Vol 17, pp 415-416*), to which the plaintiff answered by a petition on the 26th March (*ibid, pp 417-418*)

I refuse to believe that the original entry was "13-5-09", that the plaintiff tried to tamper with it, that failing in the attempt, he restored the old figure, and that he then applied for and obtained a certified copy, and finally produced the original record in court—for no conceivable purpose whatever. If he was the criminal, why should he be so anxious to publish the evidence of his own crime? It is not even possible to suggest that the object was to divert suspicion from himself, for no suspicion had been raised against him at all.

I cannot help observing that his action in calling for and producing this tampered record, even at a late stage of the case, seems to me to furnish only one more illustration, not only of his willingness, but of his anxiety to face all documents that came his way,—in marked contrast to the secretive and selective tendencies so strikingly characteristic of his opponents.

TAMPERING THE WORK OF DEFENDANTS

On a careful consideration of all the facts and circumstances, it is my definite conclusion that the tampering of the Municipal rainfall record was done in the interest of the defendants, and if that be so, the reasonable inference is that the original entry was in favour of the plaintiff and showed rainfall on the 8th May at any rate, it clearly does not exclude rainfall on this date.

The learned judge thought it "strange" that the plaintiff did not apply for a certified copy before June, 1935 (*Vol 18, p 374, ll 39-40*), but it is just possible that he did so then only on hearing reports about the tampering otherwise he would probably not have applied at all. There is no evidence in fact that he had made enquiries for any of the Darjeeling rainfall records at any stage.

BOTANICAL GARDENS REGISTER

It remains now to consider the Botanical Gardens register, which as already stated shows no rainfall on the 8th May, though it records 57 inch on the 12th. The learned judge was unable to place any reliance on the document, specially on the entries for the month of May, 1909, and having regard to the evidence of Bahadur Sing, D W 118 (*Vol 14, pp 420-425*), who proved this record, I am not prepared to say that he was "clearly wrong". The witness is said to have been a clerk in the Gardens since December, 1908, although his Service Book (*Ex Z(248), Vol I, p 265*), produced by the defendants at a much later stage through D W 366 (*Vol 16, pp 347-350*), showed the 1st March, 1909 as the date of his substantive appointment. He maintained that the register was "kept in course of business and correctly" (*Vol 14, p 421, l 30*), but the facts elicited from him in evidence were enough to negative such a claim.

AN UNRELIABLE RECORD

He stated that from December, 1908 onwards the rainfall entries were made by him, but that in the event of his illness the Curator would write up the book, or if the witness went on leave his substitute would do so (*ibid*, p 421, ll 9-11) in cross-examination, however, he changed his statement and said "readings were sometimes taken in a slip by the sahib in my absence, and I would post the figures from the slip to the book" (*ibid*, p 423, ll 36-37) In trying to explain away a confused answer he had given to the court that his first appointment was at Sikkim which he left after 3 years in 1922 or 1923 (*ibid*, p 422, ll 25-31), he said in re-examination that he wrote the entries for 1922 in the book (*ibid*, p 425, ll 9-10), apparently with the object of making out that he was on duty in his present post at Darjeeling throughout that year His Service Book, however, when produced showed that he was on leave from the 15th May to the 31st August, 1922 (*Vol I*, p 266), so that the entries for this period, at any rate, would not be in his hand at all, but on his own showing, in that of his substitute. This obviously makes it difficult to attach any value to his evidence of handwriting

It is significant that none of the pages in the register up to 1930 are signed by the Curator, though space is reserved at the foot of each page for the signature of this officer, indicated by a rubber stamp of his designation (*Vol 14*, p 423, ll 13-17), and the witness himself produced a page, purporting to be for the year 1915 with the signature of the then Curator Mr Cave on it (*ibid*, ll 18-19) According to the witness, the Curator would look up the book every 15 or 20 days and point out the mistakes, if any, but when he was asked if, in case he omitted to record the figure any day, he could supply it from memory so many days after, he first said he could, and then naively indicated that nobody would detect such omission, winding up with the statement that he never made any omission in recording the readings (*ibid*, p 423, ll 21-28)! If on this evidence anybody was to say that there might have been an omission to record the rainfall of the 8th May, it would certainly not after all be a very improbable suggestion

The witness maintained that he never recorded in any month the readings of the previous month, but could not deny that the figures for April had been wrongly entered in the column for March, 1909 The mistake was subsequently put right by the sahib, but the correction was not initialled by him (*ibid*, p 423, ll 28-33) In the total for March, 1909, again, the figure "9" was first entered and then scored through, but the witness could give no explanation of this (*ibid*, p 424, ll 4-6) Temperature figures, he said, were entered up to the 16th June, 1909 after which they were discontinued, but there were irregular entries even up to September, 1910 (*ibid*, p 422, ll 1-6) Then, again, it is to be seen, as the learned judge points out, that from 1903 to 1908 the rainfall figures were recorded on the first page and the temperature figures on the next, but for some unaccountable reason the order appears to have been reversed in the year 1909

Beyond pointing out that the condition of the book itself was not above suspicion, pages being pasted to it where the stitch had gone off (*ibid*, p 424, ll 37-39), it is hardly necessary to refer to the evidence any further the indications are abundant that the register was kept in a most perfunctory manner, and, to say the least, it is more than doubtful if it was kept by the witness at all, and I repeat that I see no reason whatever for rejecting the learned judge's conclusion (*Vol 18*, p 375, ll 22-27)

In the course of his arguments Mr Chatterjee sought to raise a point that the witness produced in court was not the real Bahadur Singh, as neither his father's name, nor his age, nor the date of his appointment as given by him in his evidence tallied with the particulars appearing in the service sheet. The matter, however, was not pursued, and as it is not noticed in the judgment of the trial court, nothing further need be said about it.

FINAL CONCLUSION

It thus follows from a consideration of all the rainfall registers that there is nothing in this body of documentary evidence which tends to destroy the plaintiff's evidence of rain and storm on the night of the 8th May.

All the grounds so far urged by Mr Chaudhuri to discredit the plaintiff's story of the evening procession and its sequel, therefore, fail, and the story must consequently stand, unless it is shaken in any way by the defendants' evidence of the morning cremation.

This takes us to the next section of the Darjeeling chapter, but before passing on to it, it is perhaps necessary to correct Mr Chaudhuri's misreading of the trial court's finding regarding the attempted evening cremation, as if it was supposed to follow from the mere fact of death at dusk. That finding is expressed in these terms: "I have thus found that the facts connected with the *sasan*, or the shelters, or the rain, do not discredit the account given of what happened at the *sasan* on the night of the 8th May *if* the body of the Kumar was taken there that night, as it *must* have been, *if* he had died at about dusk" (*Vol 18, p 376, ll 15-18*). The learned judge might perhaps have expressed himself a little more clearly, avoiding the words "*if*" and "*must*", so as to leave no room for ambiguity, but there can be no doubt that what he meant to say was that as the Kumar had died at dusk, it is only reasonable to suppose that his body must have been taken to the *sasan* that night, and that being so, there would be nothing to discredit the plaintiff's story of the happenings at the *sasan*, unless it was negatived by the facts and circumstances urged by the defendants regarding the *sasan* and the shelters and the rain. In other words, he held that while on the one hand the story was consistent with death at dusk which had been already found, it was, on the other, not contradicted by any of the facts connected with the *sasan* or the shelters or the rain. In the very next sentence the learned judge referred to the positive evidence on the plaintiff's side, which he believed and on which he really rested his conclusion.

It will be observed that throughout the discussion of this evidence not a word is said about identity.

It remains to add that the evening procession was a comparatively quiet affair with none of the pomp which was a feature of the morning show, no coins being distributed on the way (*vide Kiron Chandra Mustafi, Vol 10, p 385, l 37 and Bisweswar Mukherjee, ibid, p 397, ll 4-5*).

NO CHANGES IN PLAINTIFF'S CASE

In the course of his arguments Mr Chaudhuri often referred to what he described as successive changes in the plaintiff's case regarding the happenings at the *sasan*. The first story, he said, was that when the cremation party missed the body and could not find it out, they left after setting fire to an empty pyre, and in support of this he referred to what appeared in the Bengali pamphlets published some time after the plaintiff's Declaration of

Identity, "*Fakir Beshe Praner Raja*" (*Ex T*, Vol II, p 346) and "*Bhowaler Katha O Nabim Samnyasi*" (*Ex T* (1), *ibid*, p 344). The next variant was said to be the version which Bibhuti or Chandra Sekhar Banerjee, P W 959 (Vol II, p 28, ll 5-9) gave, writing to Calvert on the 13th September, 1923 about a rumour to the effect "that the dead body disappeared from the pyre during a storm and rain when the cremation party had taken shelter at a distance before setting fire to the body" (*Ex Z* (371), Vol III, p 348, ll 22-25), which meant that the body been put on the pyre before the men ran away for shelter.

With all respect to Mr Chaudhuri, one fails to see how either the story in the Bengali pamphlets or the rumour spoken to by Bibhuti may in any sense be regarded as the plaintiff's case. By this token, the plaintiff might be made equally responsible for the rumour referred to in Rani Satyabhama's letter to the Maharajadhiraj of Burdwan (*Ex Z* (33), Vol II, p 175). The fact remains that none of the plaintiff's witnesses have spoken to the body having been placed on the pyre before it was missed, or to an empty pyre being lit after it had been missed.

And yet, if one may speculate, the rumours might not have been without some foundation in fact not at all excluded by anything appearing in the evidence on record. It may well be that after all the outsiders in the cremation party had left, either of their own accord or sent away because it was getting too late, it occurred to the Kumar's people who remained behind, when in spite of continued search they were still unable to trace the body, to stage a cremation with an empty pyre as a last resort and as the only means they could think of at that stage of covering up a scandal, for a scandal it was, though not due to any deliberate remissness on their part. A second body might not have been available yet to suggest the brilliant idea of a second cremation, or such an idea might not yet have taken root in any fertile brain to lead to the search for a second body.

6 THE MORNING CREMATION OF THE 9TH MAY

On the question of the morning cremation the trial judge records the definite conclusion that it was a "faked" show with a "substituted body", and be it noted, he arrives at this finding on an independent examination of the evidence touching this cremation, uninfluenced by any of the facts connected with the evening attempt (Vol 18, p 377, ll 26-28).

One of Mr Chaudhuri's complaints which he has strongly emphasised before us is that the learned judge has not considered the whole of the defendants' evidence, but merely given a list of their witnesses which, again, is incomplete by one, and of these, it is said, he discusses the testimony of only 4, namely, R N Banerjee, Haran Chakladar, Gita Devi and Jagat Mohini.

I may be forgiven for saying that learned counsel was manufacturing a grievance for the sake of a grievance. In the first place, having regard to the fact that the morning cremation is admitted by the plaintiff, the question to be considered in this connection lies within a narrow compass, the only point being whether or not the body which was taken out was that of the second Kumar, and many of the witnesses can be, therefore, eliminated without prejudice to the defendants' case. Secondly, it is not correct to state that the learned judge considers the evidence of only 4 of their witnesses. He refers to several others in the course of his examination of what he describes as "a few broad facts", which in his opinion belie the defendants' story that the body was exposed and the usual rites were performed at the

sasan (Vol 18, pp 385-388) Thirdly, as regards the omission Mr Chaudhuri complains of, one is not sure that his clients have suffered at all on this account, seeing that the witness left out, Gopal Singh, a *baburchi*, D W 418 (Vol 17, pp 331-332) says that he saw the dead body in a "sitting posture" on the *charpoy* at "Step Aside",—no doubt with face uncovered, but the rest of the body "covered with a sewn garment from neck to foot"! Lastly, it is not to be supposed, merely because the judgment does not contain a detailed reference to the evidence of each individual witness, that the whole of the evidence has not been considered to apply such a test in a case like this might be a counsel of perfection, but would certainly be doing less than justice to the trial court whose judgment is in fact as full and fair as its most exacting critic could reasonably demand (see Vol 18, p 384, l 43—p 385, p 8)

DEFENCE EVIDENCE ANALYSED

Now, what is the evidence on which the defendants rely in support of their case that the body in the morning cremation was that of the second Kumar?

There is, first of all, the group of witnesses consisting mostly of the inmates of "Step Aside" who speak to the body having reposed in the clasp of the second Ram all the time ever since midnight till it was torn away from her the next morning. There is, again, the evidence of persons who say they knew the Kumar in life and recognised his face after death as it lay exposed at the house,—a category which includes those who had only had casual opportunities of seeing the Kumar for the first time at Darjeeling on this occasion, and those who had seen and known him from before. There is, further, another body of witnesses who had neither known nor seen the Kumar in life at all, whether at Darjeeling or elsewhere, but deposed to having only seen a dead body that morning at "Step Aside" or at the cremation ground, with the face uncovered, it being common case that the face was not exposed as the body was being borne along in the procession. Finally, there is the evidence of all the witnesses who went to the *sasan* and say that the funeral was a normal one with full rites and ceremonies, at any rate that there was nothing unusual about it which they remembered.

Emerging from this body of evidence, are certain broad facts which may not unfairly be regarded as a touch-stone against which to test such evidence. These are —

- (1) The Ram clinging to the dead body right from midnight to next morning, directly negating the possibility of a substituted body. This involves—
- (2) Body remaining upstairs all the time till it was brought down and laid on the *charpoy*,
- (3) Face remained uncovered up to this stage,—permitting open recognition by all, and showing no attempt at concealment of features,
- (4) Messages sent to the Sanitarium and the Cutchery Building, shortly after midnight, and arrival of Rajendra Nath Sett from the Sanitarium with Tinkari Mukherjee and Bijoy Krishna Mukherjee, and of Shyamadas Banerjee from the Cutchery Building with Anukul Chatterjee, during the night,
- (5) Fresh calls sent out in the morning through Shyamadas Banerjee, Anukul Chatterjee, Jagat Mohan and another nurse Mangli, which

brought to "Step-Aside", among others, Kasiswari Devi (wife of the Government Pleader, Mahendra Nath Banerjee), her eldest son Balen and her youngest son Rabin (R N Banerjee) *alias* Bebul,

- (6) Body exposed at the *sasan*, there again permitting full view, and discounting any suggestion of suspicious conduct,
- (7) Performance of full shastric rites at the cremation—including the recital of *mantras*, the putting on of a sacred thread or *paita* on the body, anointing the body with *ghee* and bathing it with *Ganges* water,—Jagat Mohini having been commissioned by Kasiswari Devi to take the *paita* and the *Ganges* water, the latter from Burdwan House,
- (8) Also, demonstrations of grief by a trusted servant of the Kumar, Sarif Khan, and a near relation Birendra Chandra Banerjee who performed the "Mukhagni",
- (9) Generally, the atmosphere of publicity surrounding the whole transaction

These are the facts which the defendants set out to prove, and if they were proved, they would undoubtedly establish the whole of their case

The evidence is wholly oral, and quite naturally the defendants try to support the statements of those who may be considered to be partisan or prejudiced witnesses by the evidence of as many disinterested persons as they can. Among such independent outsiders, they evidently reckon the four persons whom the learned judge has singled out for special treatment, namely, R N Banerjee, Jagat Mohini, Gita Devi and Haran Chakladar

So far as Gita Devi is concerned, the real importance of her evidence lies in her supposed corroboration of R N Banerjee's presence in the procession, which requires the procession to have passed along the Thorn Road route to make it possible for her to have noticed her brother-in-law in it from her house "Balen Villa" which lay on this route, this being in fact the only circumstance which lends significance to the question of route.

Kasiswari Devi who is said to have gone over to "Step Aside" that morning directly she got the news of death from Jagat Mohini, and is also supposed to have been visiting the Kumar every day during his illness with R N Banerjee, then a young lad of 17, is unfortunately dead, and not unnaturally is her unavoidable absence from the witness box sought to be made up for by her daughter-in-law and the youngest son

JUDGE'S FINDINGS

It will perhaps be helpful to state at once the findings of the learned judge on some of the questions indicated above. These are —

- (1) That the story about the body being upstairs, clasped by the Rani, until taken away from her at about 7-30 or 8 the next morning, is an utter falsehood (*Vol 18, p 387, ll 33-34 and p 388, ll 5-7*),
- (2) That the body was in a room downstairs, and was seen by Dr Pran Krishna Acharyya, covered up from head to foot, when he came over in the morning,—a visit which is admitted by the defendants, though the purpose of it is in dispute (*ibid, p 387, ll 25 and 39 and ll 21-22*),
- (3) That not a soul came to "Step Aside" at night after 9 P.M. on the 8th May, but men were sent for and came from the

- Sanitarium or the Cutchery Building the next morning (*ibid*, p 385, ll 9, 22, 23 and 36-37),
- (4) That Kasiswari Devi did not come in the morning (*ibid*, p 385, ll 37-38 and p 388, ll 10-11), nor was Jagat Mohini sent out to the *sasan* (*ibid*, p 389, l 24), the story about her being asked to take the *patla* and the *Ganges* water there being a pure invention (*ibid*, p 389, ll 34-38),
 - (5) That R N Banerjee was also not at "Step Aside" that morning (*ibid*, p 384, l 42 and p 385, ll 37-38), nor was the procession seen by Gita Devi from her house, as it never passed that way but followed the Commercial Row route (*ibid*, p 390, ll 29-33 and p 391, ll 4-6),
 - (6) That R N Banerjee really left for Kurseong that morning for the *Kakina sadh* (*ibid*, p 386, l 3),
 - (7) That no rites were performed at the *sasan*, and the body was burnt up without being stripped of its clothing (*ibid*, p 389, l 39 and p 392, ll 14-15),
 - (8) That the procession was made only too ostentatious on purpose, —pice scattered, reversed arms and so forth (*ibid*, p 385, ll 39-42)

As regards the demonstrations of grief at the *sasan*—Sarif Khan trying to throw himself on the burning pyre and Birendra Chandra Banerjee rolling on the ground in grief—he held these facts were admitted by the plaintiff's witnesses (*ibid*, p 379, ll 21-24)

It is not difficult to see that these findings, if it is possible to accept them as correct, are enough to dispose of the defendants' case of the morning cremation completely. The question then is, first, whether in arriving at these findings the learned judge considered all the material evidence, and secondly, whether his conclusions are justified on such evidence. In other words, all that Mr Chaudhuri is entitled to demand is that the findings should be tested in the light of the whole body of evidence on the record.

This evidence, it should be noted, does not consist merely of the statements of the defence witnesses, but includes also the testimony of witnesses on the plaintiff's side, far out-numbered as they are by those of the defendants. Mr Chaudhuri claims that the defence evidence is all one-sided and remains uncontradicted, whereas the plaintiff only seeks to raise suspicion by the evidence he has called. One has, however, only to read the short and simple deposition of the plaintiff's first witness, Dr Pran Krishna Acharyya (*Vol 1, pp 194-199*), to see what devastating effect it has on a not inconsiderable part of the defendants' case regarding the morning cremation, bolstered up as it is by an army of witnesses. This evidence is indeed quite definite, and effectively disposes of the story, which is a vital part of such case, that the body was that of the second Kumar, and that it lay at "Step Aside" with the face exposed till it was borne away to the *sasan* some time after 8 A M.

DEVASTATING EFFECT OF DR PRAN KRISHNA ACHARYYA'S EVIDENCE

It is worthy of special note that the evidence was given long before the defendants came out with the particulars by means of which they sought to establish their case, Dr Acharyya being not merely the first witness, for the

plaintiff, but the very first person to depose in the suit itself, the earliest witness on the defendants' side Shyamadas Banerji (*Vol 1, pp 255-278*) not being examined until about three months later

It is just as well to call attention to Dr Acharyya's evidence at once, of which the learned judge has given a very correct analysis in his judgment (*Vol 18, pp 386-387*), and which makes it quite clear —

- (1) that early on the morning of the 9th May at about 6 A.M. Dr Acharyya received a call from a person looking like a nurse (whether it was Jagat Mohini or Mangli does not matter), who gave him a message regarding the second Kumar, which made him go over at once to "Step Aside" with a stethoscope (*Vol 1, p 195, ll 1-6, l 12 and p 197, ll 31-37*),
- (2) that whatever the actual terms of the message were, Dr Acharyya got the impression that the patient was either dying or had just died, and he was expected to pronounce death (*ibid, p 197, ll 22-24 and 26-29*),
- (3) that Dr Acharyya had not received any authorised call for the Kumar's treatment (*ibid, p 195, ll 1-2*),
- (4) that on going to "Step Aside", he saw a dead body "completely covered" (*ibid, p 195, l 17 and ll 25-27, p 198, l 22, ll 23-24 and l 25*), and his impression was he saw it on a bedstead (*ibid, p 195, l 29*),
- (5) that he tried to uncover the body and examine the heart with the stethoscope to see if life was extinct, but was peremptorily warned off by the people there on the ground that he was a Brahmo and the body was that of a Brahmin (*ibid, p 195, ll 18-23 and p 197, ll 1-5*)

ATTEMPTED EXPLANATION OF HIS VISIT

There was not a word in the cross-examination even remotely challenging any of these facts,—nothing to suggest that Dr Acharyya did not come to "Step Aside" that morning, or that the body he saw was not fully covered up, or that he did not want to examine the body, or that he was not prevented from doing so. All that was put to him was if it was not quite natural for a member of a Brahmin family to object to a Brahmo touching the dead body of a Brahmin (*ibid, p 196, ll 1-3*) in other words, the facts were admitted, only an excuse was sought for the act of unceremoniously turning away the doctor after calling him in,—and be it added, a false excuse at that, as on the defendants' own showing no objection was raised to Calvert examining the body and pronouncing it dead. One wonders if by their standard the touch of a Brahmo, though still a Hindu, would pollute, but that of a non-Hindu would purify!

Dr Acharyya's presence at "Step Aside" being admitted, Mr Chaudhuri was really in a difficulty in finding some explanation to account for it, and yet it is clear that the purpose for which the doctor was brought there has a very material bearing on the defendants' case.

If he came on a professional visit, it would almost make it certain that the body he saw was not that of the second Kumar, for supposing the Kumar had died at mid-night, no one would think of getting a new doctor the next morning to examine his body, specially as the defendants say

Calvert and Dr Nibaran Sen were both in attendance at the time of death. This was realised by the defendants themselves, who accordingly tried to run away from this position, as is in fact shown by a question they put to Dr Acharyya suggesting that some other qualified doctor might have declared the patient dead before his arrival (*ibid*, p 197, ll 18-19), to which the witness simply replied that this was more than he could say (*ibid*, l 20)

The only other suggestion, not put to the witness, but which Mr Chaudhuri put before us, was that Dr Acharyya must have been summoned casually as a *sasan-bandhu*, just as others had been—that is to say, to assist in carrying the corpse to the cremation ground, which would pre-suppose his being told that the Kumar had died. In the first place, however, he would not in that case have come hurrying to "Step Aside" with his stethoscope. Secondly, as the learned judge points out, being a Brahmo, Dr Acharyya would have been "useless for cremation purposes" (*Vol 18*, p 387, l 23), and he would have himself told so to the person who went to call him, for, as he says in his evidence, he knew that it was a custom among Brahmins not to allow a Brahmo to carry the dead body of a Brahmin (*Vol 1*, p 196, ll 28-30). Thirdly, it is unthinkable that if he was requisitioned as a *sasan-bandhu*, he should have been allowed, stethoscope in hand, to go upstairs, where according to the defendants the dead body had been lying in the clasp of the second Rani. There is no evidence that any of the other new-comers went or were taken to the first floor that morning, except perhaps for the purpose of bringing down the dead body, the evidence is really the other way. Rajendra Nath Sett definitely says he did not go upstairs (*Vol 1*, p 309, l 30), while Mohendra Nath Banerjee states that none of the Secretariat people went inside the house (*ibid*, p 327, ll 14-15), and Nalindra Nath Ghose also speaks to the same effect (*ibid*, p 402, ll 33-34). Nor can one forget in this connection Satyendra's statement that "it was not possible for Ram Sing Subha to come upstairs into the Kumar's bed-room when the Rani was also there" (*Vol 16*, p 431, ll 10-11).

Mr Chaudhuri at one stage drew the picture of Dr Acharyya going upstairs to see the body and the Rani quietly moving away for a few minutes to facilitate his coming, but this would imply a deliberate act on the part of the people at "Step Aside" in taking him there, which would of course be the last thing the defendants would admit.

Satyendra, it will be remembered, did not even know the name of Dr Pran Krishna Acharyya of Calcutta at the time he was in Darjeeling (*Vol 16*, p 479, ll 28-29),—though on being confronted with a passage from the doctor's evidence, he was willing to concede that his visit was "not impossible, but highly improbable" (*ibid*, p 479, ll 33-34),—and Bibhabati on her part did not recollect anybody coming to examine the body before it was taken downstairs (*Vol 12*, p 248, ll 37-38), while Jagat Mohini had not heard the name of Dr Acharyya even when she was deposing, nor seen if there was a house at all below and near "Step Aside" (*Vol 1*, p 296, ll 3-5).

It is significant that none of the witnesses on the defendants' side are willing to admit the presence of Dr Acharya in fact, if I am not mistaken, those who say they were at "Step Aside" that morning are almost all without exception anxious to disown him. Thus, to pick out a few such witnesses, Shyamadas Banerji says he heard the name of Dr Pran Krishna Acharyya of Calcutta but did not know him (*Vol 1*, p 271, ll 10-11).

Rajendranath Sett speaks to the same effect, being good enough only to add that he was a "big doctor" (*ibid*, p 309, l 41—p 310, l 2) Mohendra Nath Banerjee likewise never saw him, but only heard of his name as that of "an eminent physician" (*ibid*, p 338, ll 19-21) Professor Haran Chandra Chakladar was in a somewhat better position, for he knew him and knew his face as well, and also that he was "a renowned doctor of Calcutta", but neither did he have his acquaintance nor did he remember if the doctor was at Darjeeling at the time (*ibid*, p 387, ll 12-15) Kshetra Mohan Bhattacharya, who says he was putting up at "Mall Villa" and got the news of death at about 4 or 5 A.M., merely vouchsafes the information that Dr Acharyya was staying in another part of the same house in a room close to his, but separated by a tin wall (*ibid*, p 428, ll 14-15) Birendra Chandra Banerjee (D.W. 290) heard Dr Acharyya's name first as a witness in this case (*Vol* 15, p 355, ll 3-4), only the day before he himself gave his evidence, which, however, awakened in him no curiosity to know what the doctor had said (*ibid*, p 332, ll 24-32), for he was sure that any evidence which conflicted with his, was bound to be false or mistaken,—save and except that of Rani Bibhabati (*ibid*, ll 32-35)¹ Dr Ashutosh Das Gupta, presumably because he was a doctor himself, knew the name of Dr Acharyya for a long time, from even before the Darjeeling trip, though not of course as a big doctor, but he never saw him and never heard he had come to "Step Aside" he is definite that he did not see him on the 9th May (*Vol* 16, p 327, ll 3-10)

PLAN MISCARRIES

Look at the matter from any point of view one may, there is to my mind no possible escape from the conclusion that the summoning of Dr Pran Krishna Acharyya to "Step Aside" was not and could not have been a casual act, but had a definite purpose behind it, a purpose, however, which Nemesis caused to miscarry,—that which was designed to serve as valuable evidence in their favour turning out to be the most damning circumstance against those who had planned this ingenious move. And it is this that accounts for the studied reluctance of the defendants through their witnesses to admit the visit, far less to face it, though it could not be denied in the cross-examination of the witness himself.

Mr Chaudhuri stressed it with some force that it was not necessary to call in Dr Acharyya to prove the existence of a dead body at "Step Aside" that morning, as the cremation procession itself which was to follow would have been quite enough for the purpose. He was perfectly right, but he was wrong in supposing that it was ever the plaintiff's suggestion that this was the purpose. The real object must have been to create independent evidence after the *fiasco* of that night, not of the presence of a dead body, but of the presence of *the* dead body of the second Kumar, and this could be easily and effectively achieved if Dr Acharyya could be made to give a death certificate. It was obviously out of the question to approach either Calvert or Dr Nibaran Sen for such a purpose.

Dr Acharyya no doubt said, and he it noted he did so in his examination-in-chief, that nobody asked him for a death certificate (*Vol* 1, p 195, l 39), but this was only because the Brahmo doctor must have caused a shock and a surprise by his refusal to take things for granted and his

insistence on examining the body for himself,—a rude reminder to those who wanted him how

“The best laid schemes o’ mice and men
Gang aft a-gley”

Dr Pran Krishna Acharyya, who it may be stated is no longer living, was in fact a well-known medical practitioner of Calcutta in those days and a man of unimpeachable integrity, whose credit or veracity even Mr Chaudhuri dared not assail

He is one of the persons from whom Lindsay obtained a statement in 1921, though it is not clear how Lindsay got his name, if neither Satyendra nor any of the “Step Aside” witnesses of the defendants had known of his visit. As I have pointed out in an earlier portion of the judgment, Lindsay was writing to Lethbridge on the 10th June, 1921, to get a statement from Dr Acharyya among others, and Lethbridge arranged to send for him (*Ex 439, Vol II, p 241*). Rai Bahadur Sasanka Coomarr Ghose, however, appears to have seen the witness later, and Lindsay thought it fit not to trouble him any further (*Ex 440(a), ibid, p 248, ll 1-2*). All the same Lindsay sent him a questionnaire on the 13th August, 1921, when Dr Acharyya was at Mussoori (*Ex Z(335), ibid, pp 258-259*), and the latter sent him a reply (*Ex Z(334), ibid, p 260*).

FUTILE CRITICISM OF EVIDENCE

Mr Chaudhuri tried to shake Dr Acharyya's evidence by reference to two of his answers to Lindsay, but the attempt was as feeble as it was futile

Q 4 was in these terms

“Did you know the Kumar before?

—If not, did you see the body after death?

Please give a description of the body as far as possible”

The answer was “No Yes I have altogether forgotten his features”

The argument was that he could not have forgotten the features unless he had seen them, and it was said that his present statement that he saw the body fully covered up was, therefore, demonstrably incorrect. But the fact is over-looked that Dr Acharyya was living close to “Step Aside” and knew that the second Kumar was staying there (*Vol I, p 195, ll 7-9*), and it was not at all unlikely for him to have had opportunities of viewing the Kumar there or on the road, as so many defendants' witnesses say they had done. Mr Chaudhuri drew attention to his statement in the evidence “I did not meet him there while he was alive, nor had acquaintance with him” (*ibid, p 194, ll 31-32*). The translation in the printed record is misleading: the deposition was in Bengali and the original words mean that “he had *no interview* with the Kumar in life,—he had no acquaintance with him”. Definitely, the witness did not say that he had not seen the Kumar before his death. In any event it will be seen that this particular answer was not put to him at all in cross-examination.

He was, however, cross-examined with reference to his answer No 8 which he had sent to Lindsay: “I saw sons of Mr M N Banerjee, Government Pleader, making arrangements for cremation” (*Vol II, p 260, ll 22-23*). This was in reply to the question “Can you remember the

name with address, if possible, of any person who to your knowledge was present either at the death or with the funeral procession or at the cremation?" It was said he was making a different statement now, for he stated that at the time he was speaking of, he knew Mr M N Banerjee, the Government Pleader of Darjeeling, but not his sons whom he came to know afterwards (*Vol 1, p 198, ll 2-4 and 7*) But on his being reminded of his previous answer, he still adhered to this statement, and added quite frankly "I do not think that it was right for me to write "saw" in the said answer of mine There is in the question, "to your knowledge" I came to hear later on that they were there I wrote "saw" for that reason" (*ibid, p 198, ll 37-39*) As regards cremation arrangements, what he saw was the dead body covered up, from which he understood that it was about to be taken out for cremation, and he explained that this was all he meant when he said, even before he was shown his former answer, that on going over to "Step Aside" it appeared to him that arrangements were then being made for cremation of the dead body (*ibid, p 197, ll 38-39 and p 198, ll 21-27*) The explanation seems to be quite natural, and I see nothing in his evidence which is really contradicted by the statement he gave to Lindsay

Apart from the fact that his story was in substance left unchallenged in cross-examination, there are at least three unerring indications in the evidence itself which show that he could not but be speaking the truth First, his statement that nobody asked him for a death certificate (*ibid, p 195, l 39*) if the plaintiff got him there to give false evidence, he could be easily made to say that such a certificate had been asked for from him Secondly, his statement that a nurse went to call him (*ibid, p 195, ll 2-4 and p 197, ll 33-34*), this being a fact which he could not anticipate would be quite consistent with the defendants' own case that a nurse was sent out to fetch people to "Step Aside" that morning Thirdly, his statement that he did not know who asked him not to examine the body, or who was the Kumar's brother-in-law (*ibid, p 195, ll 23-25 and p 197, ll 4-5*) particulars which he need not have withheld, if he was giving tutored evidence

It is again worthy of note that he did not pretend to remember the details of that day's incidents he said so in his statement to Lindsay (*Vol II, p 260, ll 10-11*) as well as in his present evidence (*Vol 1, p 197, l 1*) Still he had good reason to remember the occasion, as it did appear to him "a little strange" that he should not be allowed to examine the body (*Vol II, p 260, ll 24-26*), and he was "a little piqued" at this (*Vol 1, p 197, l 3*)

UNCONVINCING SUGGESTIONS

It seems to me difficult to accept Mr Chaudhuri's theory that Dr Acharyya took his stethoscope with him for nothing, and wanted to examine the body without being asked by anybody to do so If, as the defendants say, the body was lying upstairs, such officious conduct would really be impossible on his part This case was in fact not put to the witness at all, but all that he was asked was if he knew the person who told him not to touch the body (*Vol 1, p 197, ll 4-5*) On behalf of the plaintiff, however, it

was put to Satyendra if such a thing could have happened, and his answer was, as usual, characteristic

"Q—Could any doctor be asked on the 9th morning to feel the Kumar's pulse or examine him without your knowing it?

A—May be

Then says, but it is hardly probable

Q—Do you know that he has deposed that he came to the "Step Aside" on the 9th morning, saw a covered up body and wanted to feel its pulse and otherwise examine it—do you say such a thing could have happened?

A—Could have Cannot say one way or the other If such a thing did happen, it did not happen in my presence" (*Vol 16, p 448, ll 1-9*)

An important question to consider in connection with Dr Acharyya's evidence in fact is where he saw the dead body at 'Step Aside', upstairs or downstairs Neither side asked him definitely about it, but in his examination-in-chief he stated that the dead body was on a *bed-stead*, adding that this was his "impression" (*Vol 1, p 195, l 29*), and there was no cross-examination on the point "Impression" of course is not memory, but if it be supposed that his recollection was inexact and he actually saw the body lying on the floor, the defendants must face the fact of his going upstairs and account for it, which, as I have said, they cannot do without entangling themselves in insuperable difficulties To take Dr Acharyya upstairs would indeed be not only a meaningless, but a suicidal move on their part Seeing the body on a *bed-stead* might be mere "impression", but not so his seeing it fully covered, about which he was as definite as any honest witness could be, and it is the defendants' positive case that the body was not covered while it lay upstairs All indications, therefore, in the evidence seem distinctly to point to Dr Acharyya's "impression" being as good as true recollection, and it follows that he must have seen the body downstairs,—not, however, in the yard outside where, according to the defendants, it was not removed till about 8 A.M., but inside the house, Satyendra himself saying that it was not his case that any doctor examined the body while it lay on the *khatia* in the yard (*Vol 16, p 541, ll 1-2*) Birendra Chandra Banerjee also admits that if anybody says that on the morning of the 9th he saw the dead body on a *khat*, he could not possibly have seen it upstairs (*Vol 15, p 362, ll 18-19*)

IF DR ACHARYYA SAW BODY UPSTAIRS

If, according to the defendants, the body was upstairs, when Dr Acharyya saw it, one wonders why this case was not put to the witness, nor was he asked a single question as to whether he noticed the second Ranı there or not Mr Chaudhuri called attention to a question put to one of the defendants' morning cremation witnesses, Durga Charan Pal, D.W. 57, which he said showed that it was the plaintiff's case that the body was upstairs at the time

"Q—Supposing he (Dr Acharyya) had said that he had seen the body at 6 A.M. or so, fully covered up, he must have seen the body upstairs?" (*Vol 13, p 149, ll 8-9*)

Learned counsel evidently mis-read the question, which only meant to ask if Dr Acharyya's evidence would not imply such a conclusion on the

defendants' case, the object being to contradict that case by this evidence. It is ridiculous to suppose that at the stage when this witness was being examined, the plaintiff should, for no reason whatever, be suddenly making a change of case on such a vital point. In point of fact, the same suggestion was put later to Dr Ashutosh Das Gupta, who of course said that such a thing as Dr Acharyya or anybody examining, or wanting to examine, the body after death did not only not happen, but could not possibly have happened (*Vol 16, p 288, ll 5-14*)

On the question as to whether the body was upstairs or downstairs on the morning of the 9th May, it is instructive to refer to the evidence of one of the defendants' own important witnesses Mohendra Nath Banerjee (*Vol 1, pp 323-346*), which wholly destroys the case sought to be made through other witnesses to the effect that the body was brought down from the first floor by the wooden staircase at the northern end of the building, and then carried along the whole length of the road-side verandah on the ground floor, and finally deposited on a *khatia* in the yard outside. As the learned judge points out (*Vol 18, p 382, l 39—p 383, l 1*), and as is clear from the evidence of Kalu Satri, D W 75 (*Vol 13, pp 270-281*), whose description of the lay-out of "Step Aside" both sides accept as correct, the staircase led into this ground floor verandah from the glazed verandah on the top of it (which is marked No 6 in the rough sketch given by the learned judge in his judgment, *Vol 18, p 311*). If the body was lying upstairs, there could evidently be no question of bringing it out of any of the ground floor rooms in carrying it to the *khatia* outside. Mohendra Nath Banerjee, however, says quite explicitly "*The dead body was brought out from the room attached to the verandah*" (*Vol 1, p 327, ll 13-14*). There is absolutely no ambiguity in this evidence, and no mistaking the "room" or the "verandah" he means, to which in fact he frequently refers in other parts of his deposition. I am wholly unable to accept Mr Chaudhuri's suggestion that the original deposition in Bengali shows anything to the contrary, or that the learned judge mis-read the same (*Vol 18, p 387, ll 35-37*). I have read it myself more than once, and most definitely, it does not show that the "room" meant the road-side verandah, and the "verandah" meant a ledge projecting from the outer door of the house into the compound and leading down to it by a short flight of steps, as counsel wanted to say. Such a projection beyond the outer door would not be described as a verandah in the lower storey (নীচের তালার বারান্দা) (*Vol 1, p 326, l 41*), and no such projection actually existed. Kalu Satri's evidence shows that the compound outside, the inner verandah and the rooms opening into this vestibule were all on the same level (*Vol 13, p 272, ll 14-16*), and that is also what D W 66, Narendra Nath Mukherjee, says in cross-examination (*ibid, p 197, ll 7-8 and ll 14-15*) as well as in re-examination (*ibid, p 198, ll 1-2*).

Mohendra Nath Banerjee in fact makes it quite clear that the "verandah" he was speaking of was the road-side verandah, where he and others had been waiting (*Vol 1, p 327, ll 2-6*), and that the body was brought out from the inner apartments to this verandah from where it was borne away on a *charpoy* or *khatia* (*ibid, ll 19-20, 23-24, 26-27, 28-29 and 37-38*). He puts the matter beyond doubt when he says later that "the verandah, and the room from which the body was taken out to the verandah were of the same level" (*ibid, p 330, ll 29-31*). His statement that "he did not enter inside" (*ibid, p 326, l 41*) only means that he did not get into any of the inner rooms, not that he was waiting outside in the compound

The learned judge apparently takes the view that Bijoy Krishna Mukherjee's evidence on the point was the same as that of Mohendra Nath Banerjee (*Vol 18, p 387, ll 37-38*), but I agree with Mr Chaudhuri that he is wrong in so thinking. Bijoy Krishna Mukherjee no doubt spoke of the dead body being taken through the "room" in which he was seated, but reading his evidence, it is clear that by "room" he only meant the vestibule which it appears was used as a waiting hall on the occasion (*Vol 1, p 317, ll 30-31*)

FACTS ESTABLISHED

Dr Acharyya's evidence thus establishes three broad facts —

- (1) that he was summoned to "Step Aside" at about 6 A.M. on the morning of the 9th May,
- (2) that he saw there a fully covered up dead body, and
- (3) that he saw it downstairs

As it is nobody's case that there were two dead bodies in the house at the same time, the body he saw must have been either that of the second Kumar or of some other person. The first alternative is, however, ruled out by—

- (1) the hour of his call,
- (2) the purpose for which he was called, which could not be that of acting as a mere *sasan-bandhu*, and
- (3) the false excuse by which he was stopped from lifting the cover and examining the body

It will be seen, therefore, that the evidence is neither "colourless", nor does it stop short at "raising suspicion merely" it really cuts across vital parts of the defendants' case made by their witnesses regarding the morning cremation,—the body remaining upstairs in the clasp of the second Rani, and the face lying exposed at "Step Aside", and in negating these facts, also sweeps away the evidence of recognition of the face before the body was carried out of the house

HOW FAR REBUTTED BY DEFENCE EVIDENCE

The question is whether it can be said on the other hand that Dr Acharyya's testimony is itself repelled by this body of defendants' evidence, which is indeed wholly contradictory to it

The decisive consideration is that Dr Acharyya's evidence in its essential parts is admitted by the defendants,—that some one from "Step Aside" went and called him that morning, that he saw a covered dead body there on his arrival, and that he was not allowed to touch the body on the ground that he was a Brahmo facts which are wholly incompatible with the story told by the defendants' witnesses

That story may all the same be examined, in so far as it purports to describe the scenes after death in the room where according to the defendants the Kumar's dead body lay the whole of that night till it was removed downstairs the next morning

BIBHABATI'S ACCOUNT OF INCIDENTS ON NIGHT OF DEATH

Bibhabati's account in her examination-in-chief is this

"After the second Kumar's death, my brother and I and the two nurses, the two maid servants were in the room Ashu Doctor and

Birendra and Mukunda were coming and going I remained in the room—passed the whole night there Whether Satyendra, my brother, was there all the time I do not remember, but I was there until the corpse was taken down next morning The Kumar's dead body lay all night on the bed on which he had died I had thrown myself on his bed and was weeping" (*Vol 12, p 204, ll 4-10*)

In cross-examination she says

"I was awake all night till the body was taken downstairs Many people—outsiders, my Mama (maternal uncle) and Kasiswari Debi—came into the room in the morning before the body was taken downstairs My mama was Surja Narain Babu His, Kumar's body was covered, but the face uncovered before the body was taken downstairs Sometimes people would cover up the face too, but I would uncover it from time to time I do not remember anybody who wanted to examine the body before it was taken downstairs" (*ibid, p 248, ll 31-38*)

Again,

"I cannot swear at what precise hour of the clock the Kumar's body was taken downstairs I can swear that the body could not have been taken down before 7 A M It was taken down long after it was light" (*ibid, p 262, ll 1-3*)

She denies that she was removed from her husband's room on account of her fainting fits in the day-time of the 8th May and never saw him again after that all that she saw on the next morning was a covered body downstairs while she was upstairs (*ibid, p 278, ll 3-12*)

So the Rani was awake the whole night, throwing herself on her husband's bed and keeping a constant watch over his dead body, without any fainting fits

"Fainting fits" that night would of course be a dangerous admission, and she must, therefore, not only deny this, but go the length of denying the fact mentioned by her mother in a letter, that she suffered from epilepsy (*Ex 300, Vol I, p 37, ll 21-22, and Vol 12, p 259, ll 13-21 and p 277, l 39—p 278, l 18*)

SATYENDRA'S EVIDENCE

Satyendra's evidence may now be referred to This is what he says in examination-in-chief

"After the second Kumar's death his corpse remained in the room in which he died It remained there until the body was taken down next morning Before it was taken downstairs it was not left alone Bibhabati remained there I was there for the rest of the time, the nurses were there, the maid servants were there, one or two men servants were there and other officers coming and going" (*Vol 16, p 429, ll 22-27*)

Again,

"The dead body was brought downstairs at about 8 o'clock in the morning, about 7-30 or 8 A M on the day following the death" (*ibid, p 429, ll 37-38*)

"When the body was brought down and placed on the *khat*, the face was uncovered until it was finally covered with a shawl when the dead body was brought down, the second Rani was with the body" (*ibid*, p 430, ll 5-9)

Then, in cross-examination he expresses himself as unable to say whether he was upstairs or downstairs all the time the Kumar's body lay in the room on the first floor (*ibid*, p 447, ll 35-36), evidently to leave a loop-hole for Dr Acharyya's presence upstairs to examine the body, without, however, admitting the fact. He remembers he had no sleep at all that night. At about 3 o'clock in the morning he got downstairs when some people came. Between then and the time the dead body was brought into the yard, he had to go up and down many times. He has no recollection if anybody told him that a doctor wanted to examine the Kumar's body (*ibid*, p 480, ll 7-12)

The evidence so far is not inconsistent with that of his sister, except that he would not wholly exclude Dr Acharyya's coming to examine the dead body, as she attempts to do.

An hour or so after the Kumar's death, he sent "chits" to people he knew at the Sanitarium and at the Cutchery Building (*ibid*, p 429, ll 9-12 and p 478, ll 20-29)

It is instructive now to compare the account he gives with what he records in his diary. Thus, under date the 8th May

"Bibha began to have fits. The doctors melted away. Only two nurses remained. Sarif Khan was mad. Sent *Behara* for Sejomama, who came at about 3 in the morning. Message to Uttarpara and Jdpore. Sent man to the Sanitarium for men to get the corpse removed for funeral" (*Ex* 399(1), *Vol* I, p 306, ll 11-14),

and under date the 9th May

"Sett with men from Sanitarium arrived. M N Banerjee's son Balen, Phatick (same as Anukul Chatterjee), Shyamadas arrived. With difficulty removed the body covered in silks, shawls and flowers" (*Ex* 399(2), *ibid*, p 307, ll 3-5)

BIBHABATI'S "FITS"

He knew that the diary-entry about his sister's "fits" had been put to her in cross-examination, and so he tried to recall the incidents, still he "failed to remember any fit" (*Vol* 16, p 431, ll 18-24). But when he was cross-examined about it himself, his memory seemed to recover from its obsolescence, and being confronted with the entry, he said "This must have happened. I recall now that this did happen. I remember she had her first fit after the Kumar's death" (*ibid*, p 499, ll 31-32). He struggled hard, however, against any suggestion that his sister might have lost consciousness, and ended by saying "Bibhabati had what a Bengalee would call 'fits'" (*ibid*, p 500, ll 20-27), by which he apparently meant "a temporary dazed state, a state of temporary speechlessness or perhaps lock-jaw due to sudden shock" (*ibid*, ll 2-4 and 17-19). All that he remembered was that "she would cry for some time and stop, and cry again, stop and remain motionless and cry again" (*ibid*, ll 14-16), though he did not say that she was in "hysterical fits" (*ibid*, l 4).

In spite of Mr Chaudhuri's suggestion that Satyendra in his diary must have been referring to mere hysterical fits and weeping, the studied equivocation of the witness in the box leaves no doubt in my mind that Bibhabati must have had such "fits" that night, whether of the "Bengalee" variety or not, as to put an end to the story of the Rani hanging on to the dead body all through the night

OTHER EVIDENCE

A most graphic description of this story comes from Jagat Mohini, according to whom, from the moment the doctors "melted away" after the death of the Kumar, the Rani kept on clasping the body in her arms, she and Mangli in their turn clasping the Rani (*Vol 1, p 282, ll 4-6, 17-18, p 283, ll 20-22, 25-27, 33-34, p 290, ll 33-35, p 294, ll 40-42*)

The account is perhaps surpassed only by Shyamadas Banerjee who on arrival at "Step Aside" that night saw his cousin sister weeping, "placing her face upon the face of the Kumar" (*Vol 1, p 256, l 30, and p 263, ll 37-39*) He went into the Kumar's room at 1 or 1-30 A.M., and up till morning, so long as he was there, it was only Bibhabati who remained in the room (*ibid, p 270, ll 9-15*)

Dr Ashutosh Das Gupta is surprisingly restrained, and merely says that the Rani was in the room in which the dead body lay (*Vol 16, p 243, ll 34-35*)

Bepin Behari De, the khansama, was with the dead body until it was taken downstairs,—it may be he left the room occasionally for a minute or so (*Vol 14, p 499, ll 1-3*), but he speaks of the Rani clasping the dead body only at the time it was sought to be taken away from her the next morning (*ibid, p 492, ll 4-6*) He indeed gives a vivid picture of this morning scene the Rani's maternal uncle and the Government Pleader's wife and one or two other ladies forcibly tore her away from the dead body, and she in her turn tore herself away from those who were holding her, trying to dash out of the room and follow the body downstairs (*ibid, p 492, ll 6-14*)

Birendra Chandra Banerjee, the man who could check his tears at the mention of his father's death but not when speaking of the death of the Kumar (*Vol 15, p 325, ll 10-11 and p 320, l 34*), also contents himself with saying that the Rani kept hold of the body until it was forcibly taken away from her in the morning (*ibid, p 319, ll 37-40*)

R N Banerjee, who is said to have arrived only in the morning, naturally speaks only of "the violence of the Rani who wanted to throw herself on the body and was not permitting it to be removed downstairs" (*Vol 3, p 121, ll 24-26*)

For the purposes of the defendants' case it is doubtless necessary to keep the Rani and as many others as possible in the Kumar's room from midnight to morning, but the fantastic details which some of the witnesses like Jagat Mohini and Shyamadas Banerjee try to weave into the story, perhaps to give it an added touch of verisimilitude by making it as circumstantial as they can, seem to me only to demonstrate its essential untruthfulness. It is also falsified, as I have said, by the entry in Satyendra's diary and the admission wrung out of him in the witness box regarding Bibhabati's fits, he being in fact the last witness on the defendants' side to speak about the incidents at "Step Aside" on the night of the Kumar's death. None of the witnesses before him, be it noted, even drop a hint about the "fits", a fact the significance of which it is impossible to miss as clear indication of a deliberate attempt to suppress the truth

SATYENDRA'S ACCOUNT IN HIS DIARY

The diary, as I have held before, was written by Satyendra for a purpose, though he did not disclose its real object, and I fully believe that he started writing it about the time he left Darjeeling or shortly thereafter, as soon indeed as it occurred to him to keep a written record of the story as he thought it might be shaped, suppressing and altering only so much of the facts as was necessary to wipe out the evening cremation and at the same time produce a consistent account. The hour of death is necessarily advanced to midnight, but the diary as regards the Darjeeling entries is still a revealing document, some of the facts as they occurred in connection with death at dusk being fitted into the frame-work of death at midnight. These facts, though recorded under the same date as the entry about death at midnight, are yet not necessarily parts of the same story, and it should be possible, therefore, for the plaintiff, while rejecting the statement about death at midnight, to use some of the other entries as corroboration of his own case, particularly when the writer of the diary shows himself anxious in his evidence to explain away, if not disown, the same.

The diary is thus, in my opinion, very good and useful evidence of the fact that Bibhabati did have fits after the Kumar's death, whether this event occurred in the evening or at midnight, just as it also furnishes unexpected corroboration of the plaintiff's story that Satyendra did send a messenger to the Sanitarium to collect men for a night cremation, and not mere "chits" to give the news of death, without any request to anybody to come over at once, as he so strenuously sought to maintain in his evidence as an after-thought,—only that according to the diary this is supposed to have been done after midnight.

Nobody would suggest for a moment that in writing the diary Satyendra was trying to create evidence in his own favour in anticipation of future trouble. His main object must then have been only to make up a consistent story to keep before himself, which he did accordingly, as much by *suggestio falsi* as by *suppressio veri*, producing in the result a mixture of truths, half-truths and untruths. It is not at all surprising, therefore, that the diary not only falls short of providing against the exigencies of this case as they have actually arisen, but remains his handiwork to bear witness against himself. Thus does many a calculating criminal often give himself away by his very efforts to screen his own misdeed: he covers up his track, but only with a sheet of snow which the lapse of time causes to melt away.

ARRIVAL OF SASAN-BANDHUS

Apart from the Rani's fits there is another important particular in respect of which Satyendra's diary is clear refutation of the defendants' evidence, discrepant as it is, by a document which is virtually their own, while affording strong corroboration of the case made by the plaintiff. It is as regards the time of arrival of the *sasan-bandhus* for the morning cremation, whether from the Sanitarium or from the Cutchery Building.

The defendants would naturally be anxious to bring them into the house as soon after midnight as possible, not only to support the story of the Rani remaining with the dead body all through, but by the very fact of their presence to render the introduction of another corpse from outside before dawn almost an "utter impossibility." At the same time they have to face

the difficulty of having to account for the cremation not taking place at night. Wavering between these two positions, Shyamadas Banerjee is made to arrive from the Cutchery Building, according to his own statement, at 1 or 1-30 A.M. (*Vol 1, p 256, l 10 and ll 13-14 and p 270, l 9*), while Rajendra Nath Sett from the Sanitarium is brought there "not before 3 o'clock" (*ibid, p 301, ll 18-19*), his companion Bijoy Krishna Mukherjee putting down the time as "probably very early in the morning", "it may be 4 or half past 4" (*ibid, p 317, ll 16-17*).

Shyamadas says he went only with the Uttarpara man Anukul Chatterjee (*Vol 1, p 256, ll 13-14*), while Rajendra Nath Sett, according to his statement, took with him from the Sanitarium Bijoy Krishna Mukherjee, Tinkari Mukherjee and probably one or two more, but not more than 5 in all (*ibid, p 103, ll 12-14*), and on the way picked up from Cutchery Building about 6 or 7 men, including Anukul Chatterjee, but not perhaps Shyamadas Banerjee (*ibid, p 303, ll 27-29*). Tinkari Mukherjee's own evidence is that he did not go with Rajendra Nath Sett at all, but went the next morning (*ibid, p 434, ll 17-23 and p 451, ll 26-28*). Bijoy Krishna Mukherjee in his turn says that he alone went with Rajendra Nath Sett, and though they called at Cutchery Building on the way, he does not remember if the people there only promised to follow the next morning, or any one accompanied them—probably one did (*ibid, p 314, ll 27-30 and p 319, ll 26-30*).

Satyendra's recollection is that Rajendra, Bijoy and one or two more came from the Sanitarium, and Shyamadas and Anukul came from Cutchery Building (*Vol 16, p 429, ll 14-17*), all in the course of the night—at about 3 o'clock, as he would prefer to time it (*ibid, p 480, l 9*).

Whatever the conflict in this body of evidence, the case made by the defendants at the trial undoubtedly was that *sasan-bandhus* from the Sanitarium and the Cutchery Building were at "Step Aside" long before day-break, and yet this is the entry in Satyendra's diary under date the 9th May —

"Sett with men from Sanitarium arrived M N Banerjee's son Balen, Phatick (same as Anukul Chatterjee), Shyamadas arrived" (*Vol 1 p 307, ll 3-4*)

The entry was shown to Satyendra in cross-examination (*Vol 16, p 502, l 13*), but neither then nor in re-examination did he pretend to explain that though he made the record under "9 Sunday", he was referring to something which had happened the night before,—the explanation which learned counsel would now offer on his behalf, forgetting that when "Sejomama" arrives "at about 3 in the morning", the fact is entered under date the 8th May (*Vol 1, p 306, ll 12-13*), and forgetting also that Sett, Phatick and Shyamadas are bracketed with Balen who admittedly did not come until long after day-break.

I have no manner of doubt that the fact was as shown in the diary rather than what the witnesses from the Sanitarium or the Cutchery Building are now made to say for a purpose, the need of which had not probably been realised when the diary was written.

It is worthy of note that Jagat Mohini (*Vol 1, pp 281-299*) did not see any *sasan-bandhus* at the house during the night neither did Dr Ashutosh Das Gupta (*Vol 16, pp 240-346*), nor Bepin Behari De, the khansama (*Vol 14, pp 487-505*). Birendra Chandra Banerjee merely states that on the night of the Kumar's death one or two outsiders might have come, but he did not know (*Vol 15, p 350, ll 17-18*), while Anthony Morel says that "as the

night was far advanced, a sufficient number of people was not available, only one or two men came in that night" (Vol 2, p 379, ll. 13-15)

NO NIGHT CREMATION

On the defendants' evidence, it is difficult to believe that if summons had been sent out at night for men to carry the corpse, the cremation could not still be held in the course of the night. Mr Chaudhuri might not see any objection to *bashi-mara*, and Satyendra might now rise above that prejudice, but on his own showing the latter did send for men within a few minutes of death and succeeded in getting together quite a decent number at "Step Aside" long before dawn. Satyendra doubtless attempts an explanation that sufficient men were not forthcoming, and that it was difficult to carry a dead body to the *sasan* at night at a place like Darjeeling (Vol 16, p 429, ll 20-21), but this would be no more than a mere excuse. If a night cremation was difficult or out of the question, he would certainly not have disturbed people in their sleep at the unearthly hour of 1 or 1-30 A.M. merely for the pleasure of giving the news of death, nor would any of them have turned up from the Sanitarium or the Cutchery Building at an hour when their services would admittedly not be required. In point of fact, if one is to believe the defence witnesses, Satyendra was able to collect that night at least Rajendra Nath Sett, Bijoy Krishna Mukherjee, Shyamadas Banerjee and Anukul Chatterjee, if not Tinkari Mukherjee as well, and according to Rajendra Nath Sett, he probably got there 5 or 6 more from the Cutchery Building. Besides these, there were at least 3 Brahmins at the house, Satyendra himself, Birendra Chandra Banerjee and Ambika Chakravarty, the cook. Even if this was not a sufficient number, having regard to the intimate relations which are said to have sprung up between the Kumar's family and that of the Government Pleader, Satyendra had only to send word to "Balén Villa", and Balén and Robin Banerjee would doubtless have rushed to his assistance, however advanced the hour of the night when the call came.

AN UNEXPLAINED FACT

A night cremation, if there was really an occasion for it, would thus be neither impracticable nor improbable. Much as Darjeeling conditions may differ from those of other places, there is evidence on record that cremations have been held here at night, even while raining, thus when Susila Sundari Devi, P.W. 1016, lost her husband in 1921 or thereabouts, the body was removed, as she says, at 3-30 or 4 A.M. "in a hurry in the middle of the rain" for fear of a *bashi-mara* (Vol 11, p 518, ll 37-40),—a fact regarding which she is not cross-examined at all. It is useless for Mr Chaudhuri to refer to the evidence of D.W. 101, Satya Prosad Ghosal, who merely states, without assigning any reason, that though his mother died at about 11 P.M. and his sister at about 2 A.M. at night, they were not cremated until the next morning (Vol 14, p 290, ll 11-16), not that it was not possible to do so in the course of the night, if a sufficient number of men could be procured, and it is equally pointless to rely on P.W. 603 Swami Oankarananda's statement that "at Darjeeling because of the cold climate people carrying a dead body for cremation go with shoes on and in warm clothes, that is, coats or wrappers and dhuties" (Vol 8, p 98, ll 33-35),—a statement which not only does not rule out, but contemplates the possibility of, a night cremation at Darjeeling. D.W. 112, Nanda Gopal Gargari, also does no more than state as a mere fact that his father died at about 9 P.M., but was cremated the

next morning (*Vol 14, p 353, ll 22-23*), and so also D W 402, Sarada Prosad Bhattacharjee who says that Hari Das Mukherjee's brother died at 10 or 11 P M, but the cremation did not take place that night (*Vol 17, p 209, l 37—p 210, l 3*), neither witness being asked for, or offering any explanation for the delayed funeral except that the latter suggests that attempts to get men generally failed (*ibid, p 218, ll 15-18*) Anup Lal Goswami, D W 411, again, it will be seen, though claiming to be a veteran Darjeeling cremator in the defendants' camp, who would go to the *sasan* "whenever dead bodies of Bengalees were burnt" (*Vol 17, p 303, ll 29-30*), does not say that he never went at night, nor was such a suggestion put to Manmatha Nath Chowdhury, a witness on the plaintiff's side with similar experience (*P W 986, Vol 11, pp 276-283*)

The more one studies the defence evidence regarding the course of events at "Step Aside" on the night of the supposed death of the second Kumar, the more is the painful conviction brought home to one that it is not an honest attempt to lay bare the facts at all, but only an elaborate artifice to screen the truth behind a heavy veil of fiction

I for one refuse to believe on that evidence either the story of the second Rani's night-long vigil over her husband's dead body, or that of any *sasan-bandhus* arriving at "Step Aside" after midnight of the 8th May Neither 'the one nor the other was or could be a fact for the simple and sufficing reason that the Kumar's body had been removed for cremation long before, and the exigencies of a second cremation did not arise until about the early hours of the morning

DEFENCE STORY OF FACE BEING UNCOVERED

I may perhaps now turn to the evidence coming from the "Step Aside" witnesses, almost with suspicious unanimity, that they all saw there the face uncovered,—whether they were men who were in a position to recognise it as the face of the second Kumar, because they had known or seen him before, or utter strangers who had never seen or been introduced to him in life The learned judge seems to think—showing by his attitude only his utmost fairness to the defendants—that it would be enough for the defendants' purpose, if the face was not covered up, but seen, even though it might not be proved to have been the face of the Kumar (*Vol 18, p 316, l 17*)

For the body to be covered up, face and all, after death, is neither an unusual practice among Hindus, nor to be regarded as a circumstance of suspicion by itself, and it would be a mistake to suppose that the plaintiff sought to draw any adverse inference from the mere circumstance that Dr Acharyya on his arrival at "Step Aside" saw a body sheeted over from head to foot The body might well have been that of the Kumar even though he saw it in that condition, but the tell-tale fact was that he was not permitted to uncover the corpse and examine it

As it occurs to me, the very fact that one would not normally expect a dead body to be kept lying in the house with the face exposed, specially when for some reason or other the cremation was delayed, might itself have been a circumstance which Satyendra and his confreres banked upon to ward off suspicion on the part of by-standers regarding the identity of the body A person coming to a Hindu house of death and seeing a corpse laid on a bed, fully covered over, ready to be taken away, was not likely to ask any questions about it

All that one of the defendants' witnesses, Satya Prosad Ghosal, D W 101, says is that "*immediately a person is pronounced dead, the body is not always covered from head to foot*" (Vol 14, p 296, ll 31-32), a fact which the plaintiff does not and is not concerned to deny

To my mind, the plaintiff's witnesses, either of the evening or of the morning cremation, who say that they saw the dead body covered, give only normal evidence Thus, for instance —

P W 947, Jatindra Chandra Chakravarty

"I saw the body lying covered with a shawl" (Vol 10, p 419, l 32),

P W 968, Chandra Singh

"The body was covered with a white sheet" (Vol 11, p 86, l 7),

P W 603, Swami Oankarananda

"As I entered it, I saw a body, wholly covered, being brought out" (Vol 8, p 93, ll 24-25),

P W 823, Basanta Kumar Mukherjee

"Reaching there I saw the dead body wrapped in cloth and lying on a *khat* in the yard" (Vol 9, p 383, ll 31-32),

P W 967, Ram Sing Subha

"The body was wholly covered, head to foot, by a white cloth" (when he saw it in the evening) (Vol 11, p 66, ll 13-14), and again,

"The body (in the morning) was covered up entirely with a white cloth, and on the top of that was a shawl" (*ibid*, p 66, l 44—p 67, l 1),

P W 944, Bisweswar Mukherjee

"There I found the dead body lying on a *khatia* below The body was covered It was covered with a shawl or some thick stuff" (Vol 10, p 395, ll. 8-9)

SUSPICIOUS UNIFORMITY IN EVIDENCE

On the other hand, as I have indicated, the way in which each of the defence witnesses, stranger or acquaintance, keeps on saying that he saw the face uncovered, does indeed appear very suspicious One wonders in fact what should make these witnesses, almost without exception, remember this little detail, as if this was a matter of tremendous significance at the time which they were not expected to forget Admittedly, there were no circumstances to excite any suspicion regarding the identity of the body which was about to be removed for cremation These men were there, because they had been expressly summoned to assist at the funeral of the second Kumar of Bhowal quite naturally, therefore, they would take it that the body they saw at the house was that of the Kumar, and even if it was wrapped up from head to foot, they were surely not going to ask that the cloth should be taken off the face in order that they might have a chance of scrutinising the features beyond the possibility of mistake Supposing, on the other hand, the face was already exposed for them to see, this would

by' no' means be such an extraordinary fact that they should remember it to the end of their lives

It will serve no useful purpose to give a catalogue of the witnesses who speak about seeing the face uncovered the evidence they give is obviously in such utter disregard of probabilities that one finds it difficult to attach any credence to it, and I cannot help the conclusion that it is tutored evidence I do not believe that all of them were present at "Step Aside" that morning, but if they were, what one would expect them to carry in their memory is only a general impression about a funeral which they believed to be that of the Kumar of Bhowal In trying to prove a little too much, they ended by proving nothing

In putting this evidence before the court the defendants evidently lost all sense of proportion they made no discrimination between those who had known the Kumar from before and those who had only casually chanced to see or know him for the first time at Darjeeling, the witnesses being all made to say with almost equal positiveness that the face they saw was that of the Kumar

It is not at all surprising that some of them made a pitiful exhibition of themselves in the witness box To pick out only a few typical cases Kanai Ram Mukherjee did not have a glimpse of the Kumar even at Darjeeling, but had seen him only once, and that about a year or a year and a half before his supposed death, and yet was in a position to assert with confidence 21 years later that the body he saw at "Step Aside" was that of the Kumar (*Vol 1, p 365, ll 1-12*) In cross-examination, however, he had to say "It is because others said that it was the dead body of the Kumar of Bhowal that I said that I have burnt the dead body of the Bhowal Kumar" (*ibid, p 374, ll 17-20*)

Mohendra Nath Banerjee had seen the Kumar only once or twice at the Mall (*Vol 1, p 324, ll 30-31 and p 333, ll 1-14*), and quite naturally, felt a bit hesitant in examination-in-chief, saying no more than that "the dead body was that of the second Kumar (as they said)" (*ibid, p 323, ll 37-38*), but in re-examination he was made to shake off all his diffidence "It was his dead body whom I saw sitting at the Mall His name was "Ranendra—Ramendra" " (*ibid, p 343, ll 30-31*)

Nalindra Nath Ghose did not also have any "personal knowledge" of the Kumar, but had his first view of his face at the Mall where he saw him 4 or 5 times (*Vol 1, p 402, ll 10-11, p 412, ll 16-20, and p 417, ll 13-15*), but this was quite enough to make him recognise the face at "Step Aside" (*ibid, p 403, ll 10-11*), though he only stood on the road outside the gate, watching the body being brought down from inside (*ibid, p 413, ll 23-26 and l 30*)! The witness, it may be noted, was not a Brahmin, but he went, as he says, "as a mark of respect" (*ibid, p 402, l 27*), for his mess-mate Lall Behari Babu (of course dead) had given a general instruction at Cutchery Building that morning, "All of you ought to go He was a rich man You should go" (*ibid, p 413, ll 10-11*)

Durga Charan Pal, D W 57, similarly had not seen much of the Kumar at Darjeeling—might have seen him 4 or 5 times only, always in European attire (*Vol 13, p 416, ll 22-24 and p 149, l 37—p 150, l 10*), and though he also did not go inside the house but stood just near the gate, he still saw enough of the dead body to be able to say not only that the face was uncovered, but that the rest of the body was covered with a shirt and a lungi

(*ibid*, p 147, ll 2-3 and l 36—p 148, l 2) he noticed even a “reddish fair” tinge on the dead man’s face, the same as he had seen in the living Kumar! (*ibid*, p 151, ll 31-36)

Satya Prosad Ghosal, D W 101, had never seen the Kumar in life (*Vol 14*, p 287, l 21), but he was sure that the body was not covered as it lay on the bed in which it was brought down, and it was not the body of a *Pahari*, but of a Bengalee (*ibid*, p 287, ll 37-38 and p 288, ll 3-4) He was sure also that the body he saw, at “Step Aside” was the same as was carried to the cremation ground (*ibid*, p 289, ll 21-22) This is the witness who jointly with Sasi Bhusan Banerjee (since deceased) gave an affidavit of cremation to Rai Bahadur Hari Mohan Chandra for the Insurance Company, declaring that they had every reason to believe that the body they had cremated on the morning of the 9th May was that of the person whose life had been insured

A FEW TYPICAL WITNESSES

One or two samples may also be given to show the quality of the witnesses the defendants put forward to prove their case, apparently believing in the mere efficacy of numbers,—a fact, however, which one would find it somewhat difficult to reconcile with counsel’s unconcealed contempt for “*corroboration’s crafty aid*” Take for instance —

Laksman Ram, D W 74 (*Vol 13*, pp 264-269), who had a grocer’s shop in Bhutia Bustee below “Step Aside”, and who had just spread out his wares one morning at about 8 A M on a *hat* day when he heard that the “Raja of Bhowal” was dead He hurried at once to “Step Aside”, and getting inside the gate found a *khatia* there, but no corpse Some 15 minutes later, however, the dead body was brought out and placed on the *khatia*, and it “looked like that of a veritable Raja” The face was of course “uncovered” The body was then taken out of the house, and he quietly returned to his shop, apparently satisfied that he had done his duty to the defendants in anticipation as a truth-loving witness! (*ibid*, p 264, ll 22-28) On his own admission the man was convicted and sent to jail for three months for giving false evidence, but subsequently acquitted by the High Court (*ibid*, p 267, ll 4-15 and p 268, ll 21-23), though he had begun by saying that the criminal case had ended in a compromise (*ibid*, p 266, ll 29-30) According to him, the body was brought out of one of the “rooms” on the ground floor (*ibid*, p 269, ll 23-24) The witness was a tenant under Wernicke, the owner of “Step Aside”, whose care-taker was Anup Lal Goswami *alias* Nera Gossain, D W 411 (*Vol 17*, pp 302-316)

Take, again, Kalu Satri, D W 75 (*Vol 13*, pp 270-281), another man under the influence of Anup Lal Goswami He was chowkidar of “Step Aside” since 1921, but still lived in the servants’ quarters of a house just above it, called “Pekoe Tip” He had been living here also in 1909 with his father who was then the chowkidar of this place (*ibid*, p 270, ll 10-25) From the top of a hill-path going up to his quarters he could see the dead body being brought out into the compound of “Step Aside” from inside the house in a *kapra* (cloth), and of course remembered that the face was uncovered at the moment (*ibid*, p 273, ll 21-29) The witness was asked in cross-examination if he was in jail, and he vehemently protested “I was never in a jail I never was I was never imprisoned for theft The police do not come to me and look me up” (*ibid*, p 275, ll 1-3) It turned out,

however, from a register of convictions produced by the plaintiff a few weeks later that the man was in jail at the time he is supposed to have seen the incidents about which he was giving evidence, undergoing a three-years' sentence of rigorous imprisonment with effect from August, 1907, to be followed by five-years' police surveillance (*Ex 345, Vol I, p 237*) He admits that he came to Dacca to depose after taking leave from Anup Lal Goswami (*Vol 13, p 275, l 5*), and this is also borne out by Anup Lal himself who could not deny that he knew that Kalu Satri had been in jail (*Vol 17, p 311, ll 21-27*) Anup Lal knew also the other witness Laksman Ram, but of course denied that he had compelled him to give evidence (*ibid, p 311, ll 28-33*)

Anup Lal Goswami, by the way, had seen a funeral procession going past him one morning in 1909 in the bazar, scattering pice and rice as it went along, and heard it was that of a "rich man of Dacca" (*Vol 17, p 307, l 38—p 308, l 10*), but it is a pity he still desisted from bearing testimony to such an important fact in his examination-in-chief, merely stating, in reply to a specific question if he had heard of the death of the second Kumar at Darjeeling "I heard once a rich man had died at "Step Aside" " (*ibid, p 307, ll 17-18*) This happens to be also all the revealing information which he would have the court believe he imparted to Prasanna Deb Raikut, M L C, with whom he could not deny he had a conversation,—though, of course, denying the suggestion that he told this gentleman he had accompanied the funeral procession of the second Kumar on the night of the 8th May, but had to come away without cremating the body, because of rain and storm and because the body was thereafter missed (*ibid, p 307, ll 28-35*)

SHYAMADAS BANERJEE

Satyendra's cousin Shyamadas Banerjee, to whose evidence I have had frequent occasion to refer, may also be supposed fully to maintain the standard of defendants' witnesses He joined the Bengal Secretariat in 1904 as an Assistant Accountant, and was officiating Accountant when, as he says, he "retired" in 1927 (*Vol 1, p 266, ll 5-6 and 8-14*) Asked how much he got as pension, he said his "case as regards pension" was "not yet finally settled" (*ibid, p 266, ll 15-16*), and to a later question why he took pension prematurely, he started by saying "Because there was disagreement with me I took pension because I could not pull on well with the Secretary" (*ibid, p 274, ll 17-19*) A minute later he had to admit

"The order of Government is that 'I have been removed from this office' I have been removed on the ground that Government is not satisfied with my work There was a proceeding against me. Government withdrew the same" (*ibid, ll 23-26*)

A still further question had to be put to elicit the information that the proceeding was "for defalcating the Government money", and that it was withdrawn on his paying this sum (*ibid, p 274, ll 29-30*) There was a discrepancy in the account for Rs 1,000/- or Rs 1,200/-, the amount falling short from the cash balance in hand, still, to a suggestion of defalcation he returned an emphatic No (*ibid, ll 32-37*) The moment a further suggestion was put to him that there was a talk of criminal prosecution which was only dropped on his imploring the authorities to accept the money from him and let him off with an order of dismissal, he bravely replied "This is

not a fact", but not before learned advocate for the defendants, Rai Bahadur S C Ghose, had intervened, demanding to know from the plaintiff's pleader on whose authority the latter had put the question (*ibid*, p 274, l 38—p 275, l 10) "What is the fact then?"—he was asked, and the question was repeated a number of times, but taking the cue from the Government Pleader who butted in with the remark that the answer had already been given (*ibid*, p 275, ll 11-14), the witness kept on reiterating with sickening emphasis that he had nothing to add to the statement he had already made (*ibid*, p 275, l 15—p 276, l 14) Such is the type of witnesses who are the main props of the defendants' story

Jagat Mohini Dasī, the town nurse from Victoria Hospital, who also figures prominently in this chapter of the case, need not suffer by comparison either, but she must be reserved for fuller treatment later

As for Dr Ashutosh Das Gupta, a witness abandoned by his own counsel, he stands a class apart, whose tergiversations in the box would put the most shameless perjurer to the blush

As I have indicated, I am not at all impressed by the defendants' evidence that the face was seen uncovered, and in my opinion, that evidence leaves the testimony of Dr Pran Krishna Acharyya wholly unshaken

It still remains, however, to consider the other facts which the defendants claim to have proved in order to establish that the body which was taken out in the morning procession was that of the second Kumar One is that the body was seen upstairs or seen being brought down to the ground floor, and the other is the presence of people like the maternal uncle, Suryya Naram Mukherjee, and the Government Pleader's wife, Kasiswari Devi, which, it is said, should *ipso facto* exclude the possibility of a substituted dead body being in the house Both these points have already been touched upon to some extent, but it would perhaps be useful to deal with them a little more fully

' MORE ABOUT BODY BEING UPSTAIRS

The inmates of "Step Aside" like Bibhabati Devi, Satyendra Nath Banerjee, Dr Ashutosh Das Gupta, Brendra Chandra Banerjee, Bepin Behari De and Anthony Morel, all undoubtedly say that the body lay upstairs the whole night Amongst outsiders, Jagat Mohini, Shyamadas Banerjee and R N Banerjee also speak to having seen the body on the first floor Kasiswari Devi, Suryya Naram Mukherjee and Dr Nibaran Sen are all dead, but they are stated to have gone upstairs as well and seen the body there, and there is some evidence that another person, also deceased, Anukul Chatterjee perhaps went there too

The witnesses are unanimous in saying that the body lay in the room where the second Kumar had died, which they identify as room No 2, being the second from the south or the Chowrasta-end of the house, and that the second Rani remained there the whole night, but there is at least one remarkable fact about which the evidence is not only strikingly lacking in corroboration, but even discrepant It is as regards the picture which Jagat Mohini draws of the Rani holding the dead body in her clasp all the time from midnight to morning, while she and her fellow nurse Mangli keep clinging on to the Rani,—a scene which ought surely not to escape the memory of those who profess to remember the happenings of that day

to the minutest detail. Strangely enough, however, there is not a word about it from the lips of Bibhabati herself, or from Satyendra or any of the other witnesses who say they were upstairs that night. Bibhabati does not even mention this devoted pair of her companions in woe (*Vol 12, p 204, ll 6-10*), while the name of Jagat Mohini fails to stir any reminiscences in the mind of Dr Ashutosh Das Gupta, a mine of memories as it is (*Vol 16, p 288, ll 36-39*). A direct contradiction of this idyllic tale comes in fact from the evidence of Shyamadas Banerjee, who, deposing unfortunately before Jagat Mohini, declares in unmistakeable terms that he did not see any of the two nurses in the Kumar's room at all, but saw them in another room, probably on the ground floor (*Vol 1, p 269, ll 38-40*).

To my mind, this one great lie is sufficient to react on the whole of the evidence which the defendants have chosen to put forward in support of this part of their story. It is apparently little incidents like these, not perhaps considered important enough for the witnesses to concentrate upon, which really often turn out to be the touch-stone of a false case.

It is indeed difficult to believe these witnesses, not excepting those who are supposed to be "respectable" or "disinterested", as in fact I have already shown sufficiently in the course of my judgment so far, but will be made clearer still on a fuller examination of the evidence given by some of these persons.

JAGAT MOHINI THE TOWN NURSE

Take, for instance, Jagat Mohini (*Vol 1, pp 281-299*), on whom Mr Chaudhuri strongly relies as one of his most important witnesses.

She was the Town nurse from Victoria Hospital who admittedly came to attend the Kumar on the afternoon of his death. Her evidence is that the Kumar died at midnight and she was present at the time of death, and that after death she remained clasping the Rani and the Rani clasping the Kumar, till early next morning she was sent out to call people from almost all over Darjeeling for the cremation. As if this was not occupation enough, she was required to carry the sacred thread and Ganges water to the *sasan*, —the sacred thread, from "Step Aside" where fortunately Kasiswari Devi was able to supply it, and the Ganges water, from the Burdwan Rajbari, whither she was, therefore, obliged to go, in a dandy, as she once says, or in a rickshaw, as she says again. She was present at the cremation till the very end, and did not in fact leave the place before washing the pyre in true orthodox fashion with pitcherfuls of water, like every other mourner present there. She thus qualified herself fully to be an omnibus witness from "Step Aside" to *sasan*, the sacred thread and Ganges water serving not only to establish the connecting link between the two, but also to instal Kasiswari Devi at "Step Aside" where her presence that morning was bound to be very useful.

FROM "DASI" TO DEVI"

The witness in my opinion convicts herself out of her own mouth of infamous conduct which discredits the whole of her evidence. She is not a Brahmin, but still tries to pose as one. On her own account she is a "Dasi", and has been a "Dasi" all her life to the outside world, this being

JAGAT MOHINI'S EVIDENCE

a distinctive appellation of a Bengalee woman who is not a Brahmin. Her midwife's certificate from Dacca Medical School describes her as Jagat Mohini Dasi (*ibid*, p 286, ll 6-9 and p 298, ll 38-39) she takes up service at Victoria Hospital, Darjeeling, in the same name, and signs as "Dasi" in the books there (*ibid*, p 286, ll 16-18, 29-30 and 37-38) and when on retiring from Darjeeling she sets up practice at Baranagar, she also displays her name on a sign-board as "Jagat Mohini Dasi, Midwife and Nurse" (*ibid*, p 287, ll 13-15). Even her present deposition in court she signs as Dasi (*ibid*, p 299, l 11), and if the plaintiff's suggestion to Lindsay can be believed, that is also the name in which she appears to have given her statement to Lethbridge (Vol 2, p 195, ll 24-29). And yet when this woman comes to give her deposition, she becomes a "Devi" from a "Dasi", and unblushingly makes herself out as a Brahmin widow, giving her husband's name as Rajani Kanta Chakravarty (Vol 1, p 281, ll 7 and 12-13). But no Brahmin woman, as the learned judge very rightly points out, would ever call herself "Dasi" (Vol 18, p 389, ll 25-26),—not even, I may add, to hide the fact of having taken to a nurse's life, on the pretext, as the witness seems to suggest, that it might not shed lustre on the family name (Vol 1, p 286, ll 6-7).

It is impossible to believe Jagat Mohini was a Brahmin, or even a Hindu curiously enough, she could not state the *gotra* either of her husband, or of her father and maternal uncle (*ibid*, p 298, ll 3-4), the plea she gives for her ignorance that she never performed any religious rites (*ibid*, p 298, ll 4-5) being demonstrably false on her own showing, as she could not deny that she had solemnised the *svadh* of her husband at Shologhar and of her mother at Baranagar (*ibid*, p 285, ll 11-12 and p 298 ll 6-7). She went the length of saying she had "taken *mantra*", or been initiated (*ibid*, p 298, l 12), and even presumed to recite the *mantra* (*ibid*, p 298, ll 21-26), though this is strictly forbidden to a Hindu, and though in that case she should have known at least her own *gotra*.

If she was a Hindu widow, she certainly did not, as she admits herself, live the life of one since her widowhood, she observed neither the injunctions regarding her wear, nor the restrictions regarding her food. She would put on ornaments and cloths with coloured borders (*ibid*, p 285, ll 33-34), and also be eating fish and meat (*ibid*, p 284, ll 8-11), a transgression which would be shockingly repugnant to any widow in an orthodox Hindu family.

One cannot help feeling that Susila Sundari Devi, P W 1016, spoke the truth when she said that Jagat Mohini did not appear from her dress and manner to be a Hindu woman (Vol 11, p 518, ll 13-14). This lady knew one Rajani Chakravarty at Shologhar who was her father's family priest, and was startled at the suggestion that Jagat Mohini was his wife (*ibid*, p 518, ll 15-20 and 28-29), and it will be seen, to the same effect was also the evidence of her brother Jatindra Chandra Chakravarty, P W 947 (Vol 10, p 421, ll 5-14), Shologhar being the home of both the witnesses.

Jagat Mohini knew herself that at Darjeeling she was not treated as an orthodox Brahmin widow, she would not be called to any social function (Vol 1, p 287, ll 4-5), and if she took her food at the house of Mahendra Nath Banerjee with the ladies of the family, it was because, as she says, it was the house of an England-turned person (*ibid*, p 286, ll 38-40). To me it is perfectly obvious that this attempt, disingenuous as it was, to pass off the witness as a Brahmin had a definite object behind it, namely,

to fit her into the role she was intended to play in the story of the sacred thread and the Ganges water, a story which was a very necessary part of the defendants' case, and was designed to serve the double purpose of ensuring the performance of full orthodox rites at the *sasan* to the minutest detail enjoined by the *shastras*, and of securing the presence of Kasiswari Devi at "Step Aside", which it was rightly felt, would at once dissipate all suspicion regarding a substituted dead body

SACRED THREAD AND GANGES WATER

The suggestion was no doubt strongly repudiated by Mr Chaudhuri, who pointed out, quite correctly, that Ganges water could be carried by anyone, Brahmin or non-Brahmin, and called attention to some evidence which the defendants had actually led on the point through DW 402, Sarada Prosad Bhattacharjee (*Vol 17, p 212, ll 22-30*), to show that it was not defiled by the touch of even such a low-caste Hindu as a *Hari* or a *Muchu* or a *Bowri*. The fact remains, however, that the defendants were very much concerned to put forward Jagat Mohini as a Brahmin, though evidently they were not prepared for the revelations which came to light in the course of her cross-examination, and it is further not shown that a sacred thread, like Ganges water, could be carried by a non-Brahmin

It is curious, by the way, that Sarada Prosad Bhattacharjee made Jagat Mohini a Brahmo first, and then merely dressed her in the attire of one (*Vol 17, p 212, ll 18-21*)

One need not discard the story of the Ganges water altogether probably the sacred water was procured from the Burdwan Rajbari on purpose, and the fact must have been duly given out at Jaidebpur to convince the ladies there, which accounts for Rani Satyabhama writing to the Maharajadhiraj of Burdwan in 1917 "it is said that you arranged for the *tulsi* leaves and the Ganges water" (*Ex Z (33), Vol II, p 176, ll 3-4*), a fact which Rai Bahadur Sasanka Coomar Ghose had collected at quite an early stage during his first visit to Darjeeling after the plaintiff's "Atma-Parichay". One finds it difficult, however, to believe Sarada Prosad Bhattacharjee when he says that the person who called at "Rose Bank" for the Ganges water was Jagat Mohini, the Town Nurse (*Vol 17, p 209, ll 33-34*). This bit of evidence was nothing but an attempt at corroboration which the Town Nurse certainly needed, and the defendants themselves felt she did. According to him, Jagat Mohini sent word to the Maharani, and the Maharani sent word to the *pujari* at the *thakurbari* to deliver the Ganges water (*ibid, p 212, ll 37-38*), but as the witness would not see who was being given the water, unless he himself went to the *pujari* (*ibid, p 215, ll 7-8*), he must not only bring the latter to his office to give him the formal permission, as if the Maharani's direction was not enough, but accompany him to the rickshaw and see him actually pouring out the water into a brass pot which Jagat Mohini carried! (*ibid, p 212, l 38— p 213, l 18*) This giving of the water was not of course "a great event in his life" (*ibid, p 215, ll 11-12*), still he was able to give from memory 27 years later the very quantity of water which was delivered on the occasion! (*ibid, p 213, ll 22-23*)

It is perhaps worth while calling attention to the fact that on many points Jagat Mohini's evidence is not only not consistent with, but contradicted by, that of other witnesses of the defendants. Thus, as regards the Ganges water, she says that the body was bathed with the water she had brought (*Vol 1,*

PRESENCE AT SASAN A MYTH

p 283, ll 1-4), but Shyamadas Banerjee, who was examined before her, has a different story to tell, namely, that the body was bathed with water obtained from the *phora* (*ibid*, p 257, l 31), and this is also the version of Bijoy Krishna Mukherjee (*ibid*, p 320, ll 26-27), and of R. N Banerjee as well (Vol 3, p 108, ll 27-28 and 30)

Bijoy Krishna Mukherjee further says that perhaps Balai Babu (did he mean Balen?) procured the Ganges water and *tulsi* leaves as he came (Vol 1, p 320, ll 27-29), adding

"While going on with the procession on the road, Balai Babu said that the Ganges water and the earth of the Ganges and *tulsi* leaves would be required. Saying this either he procured it himself or with the help of others" (*ibid*, ll 30-33)

According to this witness Kasiswari Devi is nowhere in the picture Mohendra Nath Banerjee's idea is that Jagat Mohini took *tulsi* leaves and Ganges water from the house of the Government Pleader (Vol 1, p 325, ll 2-4)

GOING TO SASAN A MYTH

Then, as regards Jagat Mohini's supposed presence at the cremation ground, Bijoy Krishna Mukherjee's evidence is that there was no female there (Vol 1, p 320, ll 25-26), while Mohendra Nath Banerjee saw her at the *sasan* only for an hour or for an hour and a half (*ibid*, p 341, ll 15-22), though according to her own statement she was present right up to the end (*ibid*, p 283, ll 11-12), performing the very last act of pouring water over the pyre, which it was of course necessary for her to do in order to prove herself a true-born Hindu (*ibid*, p 292, ll 20-21)

I have no doubt in my mind that her going to the *sasan* is a myth, pure and simple, though besides Mohendra Nath Banerjee, there are a few other witnesses who also speak to having seen her there. Thus, Shyamadas Banerjee says that perhaps she came in a rickshaw (Vol 1, p 260, l 3), while Kalpada Maitra says she reached there with Ganges water, probably within an hour of the arrival of the cremation party (*ibid*, p 349, ll 16-17 and p 361, ll 6-8) Nalindra Nath Ghose says she went, but he does not remember if she accompanied the procession or arrived later, nor if she returned earlier or with the rest of the party (*ibid*, p 404, ll 24-26 and p 410, ll 26-36), and last but not least, R. N Banerjee volunteers the information that he remembers to have seen her some time towards the end of the cremation (Vol 3, p 122, ll 31-33), having had a previous "glimpse" of this ubiquitous phantom "behind an open doorway" at "Step Aside" (*ibid*, p 120, ll 40-41) But if I am not mistaken, she is not mentioned by any of the other cremation ground witnesses, such as Rajendra Nath Sett, Tinkari Mukherjee, Kanai Ram Mukherjee, Kshetra Mohan Bhattacharjee, Satya Prosad Ghosal, Nanda Gopal Gargari and Haran Chandra Chakladar

Satyendra, as usual, is very guarded in his reference to this witness, whose statement, by the way, he admits Lethbridge had recorded at his request (Vol 16, p 460, ll 27-28) He merely knew that Jagat Mohini had deposed that she had carried the Ganges water and sacred thread to the cremation ground (*ibid*, p 460, ll 38-39), and would not vouch for this last fact from personal knowledge

The description she gives of the dimensions of the small "ghar" at the new *sasan* shows that she could not have been there (*Vol 1, p 292, ll 2-9*) Plaintiff's witness Ram Sing Subha, P W 967, gave true evidence when he said that there was no woman at the *sasan* during the time the body was cremated (*Vol 11, p 67, ll 24-25*), and so also did Swami Oankarananda P W 603, who said he had not seen Jagat Mohini Dasī or any woman at the *sasan* at the time (*Vol 8, p 94, ll 39-40*), as well as Basanta Kumar Mukherjee, P W 823, who too did not see her or any other woman there (*Vol 9, p 384, ll 41-42*)

In her anxiety to make her evidence as circumstantial as she could, this woman thought it right to add a small, but realistic detail that as soon as she carried the news of the Kumar's death to the Government Pleader's house, his eldest son Balen started calling up people on the telephone (*Vol 1, p 282, ll 11-13 and p 290, ll 18-19*), but neither she nor the defendants could foresee that this court would obtain from the Post Master General a list of the telephonic connections at Darjeeling at the time and find out that there was none at "Balen Villa" (see the Post Master General's letter, marked by consent of parties, *Ex P M G B 1*)

Jagat Mohini, it will be seen, did not bring R N Banerjee to "Step Aside" on the morning of the 9th May, but brought instead his father the Government Pleader, M N Banerjee, as well as the latter's wife Kasiswari Devi and elder son Balen (*Vol 1, p 282, ll 10-11*) Mr Chaudhuri would probably say, as "craftiness" would, of course, be a thing unknown to a defence witness, that Jagat Mohini was merely lending corroboration's *craftless* aid to Shyamadas Banerjee who had given precisely similar evidence three days before (*Vol 1, p 257, ll 3-4*) Kalipada Maitra followed two weeks later with what "aid" he could bring, but could not make it sufficiently strong, stating merely that so far as he could remember, M N Banerjee was there (*Vol 1, p 350, l 15*) Gita Devi, however, who came to be examined some time later, cruelly let down all the three by keeping her ailing father-in-law at home, as "he was then very ill" (*Vol 3, p 164, ll 2-3*)

A PICTURESQUE FICTION

It is not necessary to refer any further to Jagat Mohini's picturesque fiction of the scene in the Rani's room as she lay there clasping the dead body and being clasped in her turn by the two nurses, nor to her deliberate suppression of the Rani's fits, or of Dr B B Sarkar's evening visit

Her story of Kasiswari's presence at "Step Aside" on the 9th May morning, as will be seen later, is equally a fiction, and quite in keeping with her true self, she introduces into the Rani's room at night two fictitious widows whom she describes as ladies "belonging to gentlemen's family" (*Vol 1, p 295, ll 13-15*), about whom no other witness speaks

It is not surprising that she completes her tale of falsehood by her denial that she knew who the Kumar's brother-in-law was (*ibid, p 288, ll 10-13*), or had even heard the name of Satyendra Nath Banerjee (*ibid, p 289, ll 32-33*) She was asked if Lethbridge had recorded her statement at Satyendra's request, and she said "I do not know all those things", but, as already stated, the fact was admitted by Satyendra himself (*Vol 16, p 460, ll 27-28*) So far as I can find, there is no evidence on record as to how Satyendra or anybody else on behalf of the defendants was able to trace out the whereabouts of Jagat Mohini at the time

R N BANERJEE ALIAS BEBUL

Another witness, also a pillar of Mr Chaudhuri's case, may be now considered,—R N (Rabindra Nath) Banerjee (*Vol 3, pp 106-124*), youngest son of the late Mahendra Nath Banerjee, the Government Pleader of Darjeeling, who has been often referred to above. His nickname is Bebul. He and his eldest brother Balen (since deceased) are said to have come over to "Step Aside" on the 9th May morning along with their mother Kasiswari Devi, and made arrangements about the cremation. Both brothers are supposed to have carried the dead body from there to the *sasan* and seen the cremation through. He was then a young lad of 17.

The outstanding facts which it is sought to establish through Rabin Banerjee or Bebul are the body remaining upstairs and the presence of Kasiswari Devi at "Step Aside", but the learned judge has refused to believe his evidence and holds that he was not there at all that morning (*Vol 18, p 384, ll 42-43*).

INEXPLICABLY OVERLOOKED AT EARLIER STAGES

There are a number of circumstances which combine to throw suspicion on the *bona-fides* of this witness, and may be briefly adverted to.

- (1) R N Banerjee is not mentioned in Satyendra's diary, though it refers to Balen by name under date 9th May. "M N Banerjee's son Balen, Phatick, Shyamadas arrived" (*Ex 399 (2), Vol I, p 307, ll 3-4*).

This is undoubtedly a most significant omission, and Satyendra has no explanation to offer (*Vol 16, p 502, ll 13-17*). His pretended forgetfulness of the name of this younger son of M N Banerjee, both in examination-in-chief and in cross-examination (*ibid, p 429, ll 30-31 and p 501, ll 38-39*), is a poor attempt to put on an air of truthfulness which deceives nobody.

- (2) R N Banerjee is not mentioned by any of the earlier defence witnesses examined on commission before him, though some of them mention Balen or Kasiswari, and two or three, as shown already, mention even the father M N Banerjee.

After his evidence, "corroboration" followed, of course, with a free flow,—but perhaps with no "crafty" intent, for the evidence came from Mr Chaudhuri's side! (See among others, D W 66, Narendra Nath Mukherjee, *Vol 13, p 191, ll 7-9, and p 194, ll 34-35*, Surendra Mohan Chanda, D W 69, *Vol 13, p 211, l 30 and p 217, ll 36-38*, and D W 101, Satya Prosad Ghosal, *Vol 14, p 289, ll 28-29 and p 297, ll 1-3*).

Seeing, however, the active part which is assigned to Rabin both at "Step Aside" and at the *sasan*, it does seem remarkable that the commission witnesses, one and all, with their wonderful powers of observation matched only by their extraordinary memory for details, should still have missed him, or have forgotten to mention his name, specially as like his brother, Rabin was carrying the dead body in "trousers and coat", as he himself says (*Vol 3, p 120, ll 25-26*), and as say also the corroborating witnesses (D W 69, *Vol 13, p 218, ll 25-27 and p 222, ll 3-7*, and D W 101, *Vol 14, p 294, ll 11-16, and p 297, ll 3-4*),—a sight which must have been quite an unusual one at a Hindu cremation even at Darjeeling. There is evidence of men going to a cremation there with shoes on and in warm clothes, as

Swami Oankarananda, P W 613, for instance, says (*Vol 8, p 98, ll 33-37*), but none about a *sasan-bandhu* being in "*sahebi dress*"

It will be seen that some of the commission witnesses were specifically asked who carried the corpse or laid it on the pyre, and yet none of them mentioned Rabin Banerjee or any body in European clothes. Mahendra Nath Banerjee in fact stated that those who brought out the dead body from inside the house to the verandah were "their own men" (*Vol 1, p 327, ll 26-27*), which would exclude Rabin, and is contrary to the later evidence of the defendants following that of Rabin.

It is impossible to accept Mr Chaudhuri's explanation that Rabin Banerjee was overlooked by the defendants at the early stage through inadvertence that is a failing of which counsel has no right to accuse his clients, who, if it is not shown, would miss a single detail they could possibly get hold of.

- (3) R N Banerjee is not mentioned or thought of in the course of the Lindsay enquiry, or even at a later stage until towards the end of 1932, when he is approached for the first time by the Collector of Dacca through the Collector of Mirzapur (*Ex Z (136), Vol II, p 270*), Mirzapur being a station in the United Provinces below Allahabad where Rabin was staying at the time under medical advice, as he says (*Vol 3, p 106, ll 22-28*).

There is no explanation for this passing over of such a useful witness before 1932.

BAR LIBRARY DISCUSSION

Rabin's own evidence is that in 1921 or 1922, after the appearance of the plaintiff, he was discussing the matter openly in the Bar Library of the Calcutta High Court, and vehemently protesting against the rumour of the second Kumar not having been cremated at Darjeeling as a "deliberate concoction" (*Vol 3, p 112, ll 28-38 and p 113, ll 7-13*). In the Bar Library there was at the time another member of the Bar whom he knew and would see off and on (*ibid, p 113, ll 4-6*), and with whom he was on "the usual friendly terms" (*ibid, p 117, ll 20-21*), Bon Behary Das, the "barrister friend" of Satyendranath Banerjee, who, it will be remembered, went up to Darjeeling with the latter in May, 1921, Satyendra having taken him along, as he says, only "out of love and friendship", and Bon Behary Das' brother-in-law N K Roy being appointed "quite accidentally" to record statements of witnesses (*Vol 16, p 491, ll 28-32*). And yet one wonders why after this open discussion the "friend" should have done such an "unfriendly" act as not to have apprised Satyendra at the time of the potentialities of this evidence.

Bon Behary Das is not a witness in the case, but as I read Rabin's cross-examination, there was a clear suggestion that he was present at the discussion. The witness, it is true, did not name him, merely stating that there were at the time other members of the Bar present (*Vol 3, p 113, ll 4-13*), but the point was not cleared up in re-examination, as I think it might have been.

According to R N Banerjee, he had yet another discussion of this case, probably in 1924 or 1925, this time in a motor car on his way back from

a Calcutta Club Dinner, with K C De, Member of the Board of Revenue (*Vol 3, p 113, ll 20-38*) The fact still remains that though K C De struck such a valuable witness, he kept supremely indifferent K C De admits that he was in the Board of Revenue from 1923 to 1928 with short gaps, and as the Court of Wards, was interested in the case (*Vol 13, p 106, ll 5-7*) It was he in fact who disposed of the plaintiff's memorial to the Board of the 8th December, 1926, *Ex J (Vol III, pp 92-120)*, by his order, dated the 30th March, 1927 (*Ex 471, ibid, pp 121-123*), and as he himself says, the plaintiff and his pleader had an interview with him before the memorial (*Vol 13, p 119, ll 30-31*), the memorial according to him being the result of the interview (*ibid, p 121, ll 8-9*) It is idle to pretend, therefore, that at the date of Rabin's supposed discussion with K C De, the latter was not sufficiently interested in the matter to have procured a statement from him

If Mr Chaudhuri's case is true, there could possibly be no justification for having overlooked R N Banerjee during the Lindsay enquiry In August, 1921, Lindsay had received Dr Pran Krishna Acharyya's answers to his questionnaire (*Ex Z (334), Vol II, p 260*), and whether or not, as Dr Acharyya now says, he made a mistake (*Vol I, p 198, ll 37-39*), there was his definite statement in reply to Q 8 "I saw sons (in the plural) of Mr M N Banerjee, Government Pleader, making arrangements for cremation" Balen Banerjee had no doubt died in 1918 (*Vol 3, p 107, l 9*), but what attempt, if any, was made to get hold of the younger son? Not only is there no explanation forthcoming from the defendants, but the fact that they did make no enquiries about R N Banerjee at that stage only shows to my mind that they themselves must have understood that Dr Acharyya had unwittingly betrayed himself into an error

PRESENCE AT CREMATION NOT AT ALL A FACT

I am thoroughly convinced that R N Banerjee was neither at "Step Aside" nor at the cremation ground that morning, as he now so airily declares with circumstantial details, and I fully accept the trial judge's conclusion on the point, which was in fact the plaintiff's case as put to the witness himself at the time of his examination

"Q—Would it be incorrect to say, Mr Banerjee, that you had never been to "Step Aside" or the cremation ground, and did not attend the cremation as stated by you?

A—It would not only be incorrect, but a deliberate falsehood" (*Vol 3, p 123, ll 27-30*)

The denial was very emphatic, but it so happens that the young man was actually at Kurseong that day, attending the Kakina feast! Mr Chaudhuri points out, quite correctly, that there is not a word about the Kakina *sradh* in the cross-examination, and this might perhaps be a matter for legitimate comment, were it not for the fact that Rabin's trip to Kurseong came to light quite by accident much later on, and that as soon as it did, the plaintiff lost no time in bringing it before the court The circumstances in which this information was revealed are fully set out in the evidence of P W 838, Jnanendra Nath Banerjee, who had in fact to be recalled two days after his examination was over to prove this fact (*Vol 9, p 430, ll 7-16*)

ATTENDING KAKINA SRADH INSTEAD AT KURSEONG

The story this witness gives seems to me perfectly natural and has the ring of truth about it. He had given a statement to the plaintiff's lawyer Arabinda Guha before he came to depose. He had been asked about the Kakina sradh then, and given the information which he stated in his evidence that he had gone to Kurseong from Darjeeling with a number of persons to attend the sradh (*ibid*, p 426, ll 19-20 and p 427, ll 20-21). He had not been asked, and had, therefore, not stated at the time who had accompanied him (*ibid*, p 430, l 8 and p 431, ll 14-17). In the afternoon of the day on which he had given his deposition he was sitting at the Dak Bungalow with Arabinda Guha and one Chuni Babu, when the conversation drifted to Darjeeling and to "Mahendra Babu and his sons", he casually mentioned "Bebul's" visit to Kurseong. He was then informed that Bebul had given evidence about having cremated the second Kumar. The witness maintained that was impossible, whereupon Arabinda Guha asked if he would care to depose, and he agreed (*ibid*, p 430, ll 27-31). He was accordingly recalled, and the further evidence he then gave remained wholly unshaken in cross-examination.

Mr Chaudhuri asked the court to believe that the Kakina sradh being a fact, this was got hold of by the plaintiff at a late stage for the purpose of sending away R. N. Banerjee out of Darjeeling on the day of the cremation, but with due respect, this seems to me to be a fantastic suggestion. If Mr Chaudhuri's clients could not ferret out R. N. Banerjee until the end of 1932, though on their own case they must have known all about his presence at the cremation right from the beginning, the plaintiff to my mind can be held very little to blame for not having been able to discover at the earliest stage a fact which was not within his special knowledge. The plaintiff should perhaps feel grateful that it was not suggested that he had manufactured the Kakina sradh itself for the purposes of his suit!

The Kakina sradh was in fact put to the very first witness of the defendants, Shyamadas Banerjee (*Vol 1*, p 271, l 37—p 272, l 6), and to several others who followed, such as Jagat Mohini (*Vol 1*, p 289, ll 38-40), Rajendra Nath Sett (*Vol 1*, p 303, ll 14-18), Mohendra Nath Banerjee (*Vol 1*, p 326, ll 16-20), and Haran Chandra Chakladar (*Vol 1*, p 386, ll 11-13). Of these, Rajendra Nath Sett only heard that many persons had gone to attend the invitation; the others professed not to know anything about it, so that it was useless to ask any of these witnesses for names. Fakir Chandra Roy also stated that many people from Darjeeling had gone to Kurseong on the occasion, but gave no names of any such persons (*Vol 3*, p 8, ll 13-16).

On the plaintiff's side, the Kakina sradh was first mentioned by Surendra Chandra Roy Chowdhuri, but he was not in a position to state from personal knowledge who attended on the 9th May when the feast was held, he himself having come away to Darjeeling on the day following the actual ceremony which had taken place five days earlier (*Vol 2*, p 469, ll 20-28). As to R. N. Banerjee's presence at Kurseong on the day of the feast, Jnanendra Nath Banerjee, as already stated, was the first to speak about it, and after him followed several other witnesses to prove the fact, such as Ranjit Shingh, P W 940 (*Vol 10*, p 380, ll 20-33), Shaila Shekhar Chatterjee, P W 943 (*Vol 10*, p 391, ll 30-35), Bisweswar Mukherjee, P W 944 (*Vol 10*, p 395, ll 33-37 and p 398, ll 32-33) and Sashi Mohan Das, P W 969 (*Vol 11*, p 96, ll 22-37 and p 100, ll 22-23), of whom the last two were residents of Kurseong.

at the time, and Shaila Shekhar Chatterjee was son-in-law of R N Banerjee's own uncle (father's brother)

A criticism which Mr Chaudhuri advanced,—for what purpose, it is difficult to see,—was that these witnesses of the Kakina feast mentioned each other only, and not any body else. This is, however, not a fact. Besides R N Banerjee and the witnesses themselves, there were many others in the Kurseong party whose names they did give, as for example, Amrita Lal Ghosh, Satis Ghosh, Suren De, Siddheswar De, Radha Binod Chatterjee, Nagen Bose, and Jamini Mukherjee, mentioned by Jnanendra Nath Banerjee himself (*Vol 9, p 429, ll 17-37*), as also one "Kiron Babu" mentioned by Shaila Shekhar Chatterjee (*Vol 10, p 391, l 36*). As for this "Kiron Babu", it is necessary to add that he cannot be Kiron Chandra Mustafi, P W 941, as Mr Chaudhuri sought to make out in order to contradict the witness who named him, Kiron Chandra Mustafi's own evidence being that he was taken ill on his return from the night cremation and suffered from fever for 5 or 6 days (*Vol 10, p 384, ll 12-14*).

Nor is there anything in Mr Chaudhuri's point that as Bisweswar Mukherjee said that Bebul was the leader of the party that went to Kurseong (*Vol 10, p 398, ll 32-33*), his presence there must have been a notorious fact, and that Bebul should, therefore, have been cross-examined about it. Such cross-examination, it may be taken for granted, would have elicited a straight denial, but apart from this, it is quite clear that the plaintiff did not make, nor was he called upon to make, any enquiries regarding the matter until after Bebul had been put up to assert that he had played a not inconspicuous part at the morning cremation.

AN OVER-CLEVER WITNESS

There are many other reasons appearing in R N Banerjee's evidence itself, which make it difficult to accept it as that of a truthful witness, but nothing was wanting on his part to give it the appearance of truth, though he probably over-reached himself in the attempt.

Thus, for instance, he was asked who carried the dead body, and prefacing his answer as he did with the remark, "it is difficult to remember after such a lapse of time", he proceeded to give two names, besides his own and his brother "Balen Babu's",—those of Siddheswar De, the Registration Head Clerk, and Sashi Banerjee of the Deputy Commissioner's office, as among the local people who helped to carry the body. There were many others, but they were not local people and he was not acquainted with them. He could recollect, however, that "somebody connected with the Maharaja of Burdwan or his office" also went (*Vol 3, p 108, ll 1-8*).

REFERENCE TO SIDDHESWAR DE

It is doing no injustice to this clever witness to suggest that there was meaning and purpose in his remembering these two particular names among so many others. Siddheswar De and Sashi Banerjee were persons who had left documentary evidence to prove their presence at the cremation by swearing insurance "affidavits" (*Ex 29, Vol I, p 182 and Ex Z (202), ibid, p 183*), and it must have been supposed that there was no surer means of producing confidence in the strength and accuracy of Rabin's recollection than for him to be able to recall two such names, as though by a genuine

effort of memory The casual mention, but without the name, of somebody from the Burdwan Raj office was only another conscious attempt to give an unconscious touch of reality to the evidence

It so happens, however, that Siddheswar De never attended the cremation, and the defendants themselves found it necessary to drop his presence, suppressing his affidavit as long as they could till denial was no longer possible when the plaintiff tendered the document in court on the 20th April, 1934 (*Vol I, p 182, ll 32-37*) The affidavit or certificate, it will be remembered, had been procured by the defendants through the good offices of Rai Bahadur Hari Mohan Chandra, but through some mischance, in describing the personal appearance of the deceased, it made the stature "tall" and the body "stout built", a description which would at once tell off the body from that of the second Kumar, whose measurements only 4 years ago as given in the insurance proposal (*Ex 230, Vol I, p 175, Item 7*) were —Height—5 ft 5 in (without shoes), Chest—in inspiration 35½ in, in expiration 33 in, and Abdomen—30 in Siddheswar De is dead, and it is manifestly impossible for the plaintiff to explain how the defendants came to burden themselves with such an affidavit he can only point to certain facts and leave them to speak for themselves One is that this affidavit apparently necessitated a fresh certificate of "average stature" and "strong build" from Rai Bahadur Kali Prasanna Vidyasagar, a man who had really known the second Kumar from his very birth (*Ex 269, Vol I, p 188*), this again being a document tendered by the plaintiff, though like the other affidavit, it had been called for by the defendants (*Vol 18, p 184, ll 28-43*) A further fact disclosed by Mr Chaudhuri himself,—though only to account for what according to him was a wrong description in the affidavit,—is Siddheswar De's own statement to the Board of Revenue, as counsel read it out to us from the copy sent to the trial court by the Board, which showed that he was on his way to Kurseong on the day of the morning cremation and saw the procession from a distance It is also a fact that none of the defendants' witnesses of the 9th May before R N Banerjee, nor, so far as I can see, any after him, mention the name of Siddheswar De as among those whom they saw at "Step Aside" or at the *sasan*,—D W 101, Satya Prasad Ghosal merely stating in examination-in-chief that he knew the man (*Vol 14, p 291, ll 1-2*) R N Banerjee, no doubt to make himself as emphatic as he could, actually took Siddheswar upstairs, a perfect stranger as he was, even before he and his brother Balen got there (*Vol 3, p 120, ll 37-38*)

Satyendranath Banerjee admits having sent Siddheswar's affidavit to the Insurance Company, but he neither knew the man, nor made any enquiries about him, nor did he know if his statement to the Board of Revenue was that he had seen the funeral procession on his way to Kurseong (*Vol 16, p 541, ll 21-26*) A bit of edifying cross-examination which followed may perhaps be quoted here Satyendra would not call the second Kumar a short man, but only say, not as tall as he himself was

Q—Would you call him a tall man?

A—*Rather tall* I would say, though judging by my height I would not I would call him a man of medium height

Q—The body that you carried on the morning of the 9th was that of a tall man?

A—*You may call Kumar that* It was Kumar's body I would call him, judging by me, a man of medium height When a

Bengalee ordinarily talks about a tall man, I have a notion of what he means (Then says) That would depend upon the man "

He no doubt protested that he was not indulging in these subtleties because Siddheswar had described the dead body as that of a "tall" man (*ibid*, p 541, ll 27-39)

There can thus be no doubt that on the defendants' own showing, the affidavit notwithstanding, Siddheswar De's presence at "Step Aside" or at the cremation ground on the 9th May was no more a fact than that of his enterprising sponsor Plaintiff's witness Jnanendra Nath Banerjee spoke the truth when he said that Siddheswar was one of the batch who went that day to the Kakina feast If, by the way, the further statement of this witness can be accepted, on which there was no cross-examination, that Siddheswar went subsequently to jail for embezzlement (*Vol 9, p 429, ll 25-27*), it affords yet another illustration of the defendants' characteristic instinct in selecting their tools

Three or four months before he gave his deposition, R N Banerjee had supplied a statement to the Collector of Mirzapur in the form of answers to a set of interrogatories (*Vol 3, p 114, ll 5-7*), which was produced by the defendants at the request of the plaintiff's pleader and marked as an exhibit (*Ex 288, Vol II, pp 272-274*) In Q 17 (not printed) he was categorically asked

"Q—Did you carry the dead body?

Who else did (any name that you can remember)?

Did the hillman carry the said dead body?"

The answer was

"A—I believe so, and also my brother I do not remember the others I do not think that any hillman carried the said body "

This was said on the 8th December, 1932, and he gave his evidence on the 28th March, 1933 What happened between these dates to produce a regurgitation of memory?

TALK WITH "BROTHER BHUPEN"

Bebul did not remember even the name of Satyendranath Banerjee and could not connect it with anybody he knew (*Vol 3, p 113, ll 2-3*) probably he had never seen the Kumar's sala! (*ibid*, p 114, ll 12-13) But whether this was a fact or not, we have it from the witness himself that he came down to Calcutta after receiving the interrogatories, and had a talk with his "brother Bhupen" (*ibid*, p 114, ll 5-11 and p 115, ll 14-15),—Bhupen, or to call him by his full name, Rai Bahadur Bhupendra Nath Banerjee, being then Deputy Commissioner of Police, South District, Calcutta (*ibid*, p 107, ll 10-11), and a person who evidently knew a good deal about the case It was he who, according to Gita Devi, his wife, got this lady to give evidence herself for the defendants, though this made her very angry with him, and as she says, had actually taken down her statement and typed it out at Darjeeling in the month of October preceding, telling her that "he had some use for it" (*Vol 3, p 169, ll 8-10, 13-17, 19-20 and 21-23 and p 170, ll 23-25*)

In his cross-examination R N Banerjee certainly gave the impression that his Calcutta visit took place before he gave his statement at Mirzapur, and that is how the learned judge understood him (*Vol 18, p 384, ll 3-6*).

An attempt was no doubt made in re-examination to repair the mischief of this evidence by eliciting from the witness the 27th December, 1932 as the precise date of his arrival in Calcutta, which of course he gave with due details calculated to impress (*Vol 3, p 123, l 35—p 124, l 4*), but this would still leave the Calcutta visit a long way behind the date of his commission examination, and leave accordingly every channel of communication open for that evidence

DOGMATIC STATEMENT ABOUT SHED AT SASAN IN 1905

If for all his astuteness Bebul's reference to Siddheswar De, not a Bramhin, be it noted, as one of the persons who carried the corpse, so hopelessly betrayed him in the result, the note of assurance with which the witness spoke about the next topic proved in the end no less disappointing. He was quite positive he saw a shed at the burning ground when he went to cremate the second Kumar, but as if this was not enough, he added with perfect nonchalance that he had seen the same shed in 1905 or 1906, even remembering the occasion which had taken him there that year, the death of Rai Bahadur Dr Das (*ibid, p 108, ll 11-22*),—this death alone being probably the fact, if D W 411, Anup Lal Goswami, can be believed (*Vol 17, p 315, ll 24-25*). It is now admitted that the new *sasan* had not come into existence at all in 1905 or 1906, far less the shed which Bebul pretends to have seen, then barely a lad of 13. Unfortunately for the witness, the way he spoke leaves no room for a suggestion that he might probably have been making a confusion with the shed at the old *sasan*.

In the earlier stages of the case, as shown already, the defendants' attempt was to obliterate the traces of an old *sasan* to which the Kumar's body might possibly have been taken for the evening cremation, and the only question on which it was sought to focus attention was,—shed or no shed, with the suggestion, very cleverly concealed, of a common site for both the evening attempt which failed and the successful attempt of the next morning. In aid of such a case, Bebul's evidence doubtless lent the most convincing support.

Mr Chaudhuri suggested that the defendants got this witness himself to prove the old *sasan*, and that he could not, therefore, be supposed to be denying its existence in his evidence. This is hardly, however, a fact. R N Banerjee no doubt proved the signature and handwriting in certain records and proceedings of the Hindu Burning and Burial Ground Committee (*Vol 3, pp 110-112*), but it will be seen from these documents (*Vol 1, pp 103-110, 113-114, 117-144 and 149*) that while they refer to the new *sasan* and to the construction of a shed at this spot, none of them give any indication of the previous existence of a cremation ground at a different site. The proceedings which might have furnished unequivocal evidence of this fact were carefully excluded, and it was left for the plaintiff to produce and prove the same,—such as *Ex 35* (*Vol 1, p 101*) through Swami Oankarananda, P W 603 (*Vol 8, p 94, ll 14-16*), and *Ex 203* (*Vol 1, pp 115-116*) and *Ex 204* (*Vol 1, p 112*) through Momi Mohan Sen Gupta, P W 960 (*Vol 11, p 37, ll 22 and 24*).

AFFECTED AIR OF TRUTHFULNESS

As the learned judge points out, R N Banerjee affected a certain "off-hand" manner in giving his evidence which really gave him away.

(*Vol 18, p 383, ll 22-26*) Thus, for instance, on being asked when he first came to know that the Kumar was ill (*Vol 3, p 116, l 6*), he answered in quite supercilious fashion

"He was more or less always ill, but I was too young to know whether it was real illness, or it was the after-effects of excessive indulgence in liquor" (*ibid, ll 7-9*)

The excess of his cleverness, however, defeated itself. Personally he had never seen the Kumar drinking, as he had to admit afterwards, and what he had said was a "mere conjecture" (*ibid, p 117, ll 14-15*) he had only seen the Kumar with his brother Balen at Jones' Billiards Saloon, and as drinks were "the order of the day there", he drew the natural inference that the Kumar was addicted to liquor (*ibid, p 117, ll 10-14*),—as convincing an exhibition of logic as of truthfulness!

Then, again, as to what led him to make a statement before the Magistrate at Mirzapur and then to sign it (*Vol 3, p 314, l 29 and p 118, ll 30-34*), he raised himself to a high pitch of morality which only served to bring into relief his true level. He admitted there was no law or procedure he knew of under which his statement had been taken (*ibid, p 114, ll 29-33*) the Magistrate had also warned him that he was under no obligation to make a statement (*ibid, p 118, ll 13-14*). But he loftily declared that "a great fraud was about to be perpetrated", and he felt himself to be in honour bound to disclose the facts as he knew them, whether there was any statutory provision in this respect or not (*ibid, ll 16-19 and 38-40*). Quite right, and nobody would be disposed to quarrel with him that "as a gentleman and as a member of the English Bar", he should "do all in his power to vindicate the cause of justice and equity" (*ibid, p 119, ll 1-3*). But the rift in the lute was that all this virtuousness had not been in evidence at any earlier stage, though on his own statement this "very remarkable case of false impersonation" had been brought home to him by his own discussions in 1921 or 1922.

His introduction of Rithe, the servant and carpenter, was another of his small, but characteristic, touches of verisimilitude, (*ibid, p 120, ll 32-33*), but this unfortunately necessitated the services of this man being requisitioned for a purpose mentioned by no other witness, namely, to unscrew a tin partition across the verandah, so as to facilitate the removal of the body by the "cement staircase", which itself was sufficient to give him away (*ibid, p 121, ll 17-20*).

"CEMENT STAIRCASE"

The witness did not say in so many words that the body was actually brought down by the "cement staircase", but that is plainly what he indicated, and not the wooden staircase in the glazed verandah which he did not mention at all in this connection, and his evidence leaves it in no doubt that the nearest approach to his "cement staircase" would be the sloping path "built against the rivetment" by the side of the house that led up to the front room upstairs from the compound (*ibid, p 120, ll 37-38, p 121, ll 2-6 and 35-36, and p 122, ll 1-3, 14-16*), though according to Bibhabati herself the sloping path was neither cemented, nor stepped (*Vol 12, p 314, ll 22-23*).

His over-confident assertions only betrayed him into hopeless confusion as to the way the dead body was brought down or where the *khatia* was

placed for the reception of the dead body, with the result that he had to volunteer the statement "The *khatia* was under the portico adjoining the steps" (*Vol 3, p 122, l 3*), little realising that placing the *khatia* under the portico as he did, he still spoiled the effect of what he had been expected to say by the addition of the descriptive words "adjoining the steps", which was no doubt forced on him by the necessity of having to save his own evidence! By the "steps" he could only mean his "cement staircase", imaginary as it was, and not, as Mr Chaudhuri would suggest, a short flight of steps attached to the portico itself, which would be equally imaginary

PATENT MARKS OF TUTORED EVIDENCE

This is only one more illustration how a tutored witness, conscious perhaps of his own importance, cannot at times resist the temptation of embellishing his evidence with unnecessary details outside his instructions, only to find when it is too late that in the attempt he has merely enmeshed himself in a tangle out of which extrication becomes a hopeless task

It would be wearisome to refer to all the obvious marks of falsehood in R N Banerjee's evidence which he himself helped to expose by his excessive affectation of self-confidence one or two instances will suffice

Take, for example, the way in which he speaks of his visits to "Step Aside", where he says he had been at least ten or twelve times (*ibid, p 115, l 33*) during the Kumar's stay—sometimes going with his mother and sometimes only carrying "vegetables and other necessities" from her (*ibid, ll 34 and 37-38*) he would often again go there under instructions from her to take the landlord's munshi to show him any petty alterations and repairs that required to be done at the house (*ibid, ll 34-37*)—as if neither the Kumar nor Satyendra was competent to send for Ram Sing Subha for the purpose, if there was really any occasion for doing so And yet, if he is to be believed, Bebul was "not personally acquainted" with the Kumar (*ibid, p 107, l 20*), nor apparently with any of the other inmates of the house—except only the Rani (*ibid, p 116, ll 30-35 and ll 1-2*), neither did he feel interested in making any enquiries about the Kumar's health till one fine morning he received the information of his death (*ibid, p 116, ll 15-17*), though all along since the day of the Kumar's arrival he had been hearing about his "stomach troubles", and was in a position to assert that this was the cause of his death (*ibid, p 116, ll 11-12*)

Bebul was not sure at first if he had paid a visit to the house during the last two or three days (*ibid, p 116, ll 20-22*) all that he "knew" was that the Kumar had not been going out for his usual walks, and there was the further fact that his mother had been sending over "grapes and pomegranates"—fit diet for a biliary colic patient!—which led him to suspect an "aggravation" of the Kumar's illness (*ibid, p 117, ll 22-26*) Lest, however, this might be no more than mere inferential evidence of the illness, he had no hesitation a moment later to take himself to "Step Aside" during these two or three days, and that not once or twice a day but "off and on", when of course the Kumar was visible, not in his sitting room on the ground floor, but upstairs in his bed (*ibid, p 117, ll 28-32*)

Consider, again, the easy self-complacence with which he makes the second Rani discard the purdah in his favour, notwithstanding the strict Bhowal custom, some idea of which is given by the Chota Rani Ananda Kumari Devi in her evidence (*Vol 14, p 84-85*), and by the second Rani herself, who

EVIDENCE OF GITA DEVI

says in fact that she would "never see people with purdah off", even when her talukdars came to her for a personal interview with *nazars* or gifts of money (*Vol 12, p 216, ll 11-12 and 28-29*), and who would claim to be purdanashin also when she was having her first look at the plaintiff from her house in Lansdowne Road as he drove past in a phaeton with Buddhu (*ibid, p 269, ll 23-24*) At Darjeeling too the second Rani, a young girl of about 20 as she then was, would observe purdah, never going out of doors except in a rickshaw, and that again after dusk when she would not be seen (*ibid, p 274, ll 15-18*), and yet she would appear before and talk to this lad of 17 (*Vol 3, p 116, ll 1-2*), who had apparently made himself a *persona grata*, carrying fruits and vegetables from Kasiswari Devi on the one hand, and acting as an honorary house-agent on the other, looking after necessary repairs and alterations

It is not necessary to discuss the evidence of R N Banerjee any further I do not believe a word of it, the information notwithstanding which he volunteered that he was a daughter's son of Rai Jagadananda Mukherjee Bahadur, a well-known citizen of Calcutta of his time who had been honoured with a visit to his house at Bhowanipore by His late Majesty King Edward VII as Prince of Wales (*Vol 3, p 120, ll 21-23*) I refuse to hold, either that Rabin was at "Step Aside" on the morning of the 9th May or that he attended the cremation on that day

GITA DEVI CALLED TO SUPPORT R N BANERJEE

Perhaps the most eloquent commentary on R N Banerjee's evidence is the action of the defendants themselves in calling Gita Devi as a witness to lend him such support as she could, without going the length of bringing this lady into "Step Aside" itself along with her brother-in-law Gita Devi (*Vol 3, pp 159-172*) was not a willing witness She had never deposed in her life, and it made her "angry" that she would have to do so (*ibid, p 169, ll 16-17*) She protested to her husband many times she was a lady and belonged to a respectable family, as such how could she depose? But her husband would not listen (*ibid, p 170, ll 20-23*) It was the month of October 1932 she had come up to Darjeeling with her husband to spend the Puja vacation, and was staying at "Baln Villa" (*ibid, p 169, ll 20-21*) She did not know then who had instituted the suit or against whom it had been brought (*ibid, p 169, l 40—p 170, l 2*), and in any case she was not filled with her brother-in-law's resolve to come forward herself as a champion of "justice and equity" She was, however, a loyal wife, and did not find it in her to resist her husband's importunity "You will be asked one or two questions", said he "tell whatever you know from behind the screen" (*ibid, p 170, ll 23-25*) Poor lady, she asked innocently what were these "one or two things" she would have to tell (*ibid, ll 26-27*) One referred to the Rani, she was told, and the other to Balen's and Rabin's going to the cremation ground (*ibid, ll 27-28*) How did the husband know, by the way? He was not present at Darjeeling when the Kumar was there he was very probably, as his wife says, a Police Inspector at Muzaffarpur or somewhere else at the time (*ibid, ll 29-30*) Evidently his wife could not have confided to him at any earlier stage the facts she knew otherwise he would not ask her at the time of obtaining her statement, "what do you know about the death of the Kumar?" (*ibid, p 169, ll 8-10*)

Her husband was not a man to leave anything to chance He at once got her to make her statement, and typed it out himself she did not know

what he did with the statement it was enough for her he said he "had some use for it" (*ibid*, p 169, ll 10-11, 19-20, 21-23 and p 170, ll 36-37) She was not in a position to state if the defendants' lawyers Rai Bahadur Sasanka Coomar Ghose and Mr Pankaj Coomar Ghose had seen her husband at Darjeeling during the Puja vacation her husband might be asked about it (*ibid*, p 170, ll 31-35)

A "CONSCRIPTED" WITNESS

Speaking for myself, I cannot imagine a worse form of bringing undue pressure to bear on a Hindu *pardanashin* woman than the tactics which were employed by the defendants to get this lady to depose on their behalf when she was not willing to do so herself The husband simply allowed himself to be turned into a conscripting agent to procure the evidence It was not as though the husband was approached that he might ask his wife if she was willing to give her evidence, and then, if she agreed, that he might render the facilities necessary for her examination

After all, on the defendants' own showing, where was the necessity of calling Gita Devi as a witness, except only to support Rabin's presence in the morning cremation by making her a spectator of the funeral procession in front of her house? They themselves must have felt that Rabin's word was not enough, nor would the evidence of other witnesses carry sufficient weight, but it is all the same a pity that they should thus have dragged in an innocent lady against her will to bolster up a case they knew to be false

It is little to be wondered at that Gita Devi should have unconsciously failed the party who had pressed her into their service in this way Even on points on which she was expected to speak, she gave herself away by the manner in which she volunteered her answers before the questions were put

"VOLUNTARY" CHARACTER OF HER EVIDENCE

She is asked if she had any *Bhasur* (husband's elder brother) Yes, she says, and gives his name, but she can hardly hold herself, and involuntarily it comes surging out of her lips "it was he and my husband's younger brother Mr R N Banerjee *who did everything*"! (Vol 3, p 159, ll 16-18) She has to be warned by defendants' advocate "Please reply only to the questions which we shall put to you" (*ibid*, l 20) Then, again, the question is "How did you know that he (Kumar) had died"? She starts off giving another part of her story—how her husband's elder brother, her mother-in-law, her husband's younger brother used to go to the Kumar's house every day, and how before his death owing to his illness her mother-in-law and her husband's younger brother would take or send fruits to him! (*ibid*, p 159, ll 29-34) She has again to be stopped, and reminded about the question to get the proper answer out of her! (*ibid*, p 160, l 1) Yet again, when she is asked, "Whom did they take", she is not satisfied with saying that they "took the Bhowal Raja", but must add the important detail which was no doubt expected of her "They carried it by the road which was below her house We saw it The bier was covered with a shawl" (*ibid*, p 160, ll 19-22) She is asked a further question "When did your

husband's elder and younger brothers return?" The answer is "Please first ask me everything about the Ram and then I shall say"! (*ibid*, p 160, ll 36-38)

There could hardly be any clearer indications of the "involuntary" character of the evidence than this "voluntariness" on the part of the witness. One cannot but feel sympathy for Gita Devi in the predicament in which she found herself placed,—through no fault of hers except perhaps her unwilling, if not unquestioning, submission to her husband's will.

I have no doubt whatever in my mind that the learned judge was perfectly right when he suggested that R. N. Banerjee having damaged the case by his evidence, the defendants found it necessary to put his sister-in-law into the box to prop him up, if they could (*Vol 18, p 382, ll 12-15*). Gita Devi says no doubt that her statement had been taken by her husband in October, 1932 (*Vol 3, p 169, ll 19-20*), which was before R. N. Banerjee was approached to have his statement recorded through the Collector of Mirzapur (*vide* Collector's letter of 2-12-32, *Ex Z(136), Vol II, p 270*), but it is impossible to believe that Gita Devi was in the picture at all as a likely witness when her brother-in-law was examined.

ALLEGED ROUTE OF FUNERAL PROCESSION BY THORN ROAD TO BE VISIBLE FROM BALEN VILLA

The main fact it was sought to prove through her was Rabin's connection with the morning cremation, but not having stirred out of her house at all that morning, she was obviously not in a position to bear direct testimony to it. She might still, however, be a useful witness on the point, if she could say she had seen the funeral procession from her house and seen also her younger brother-in-law in it.

And this is exactly what she said she had done (*Vol 3, p 160, ll 21-26*), volunteering the first part of her statement even before she was asked about it. She did not know the house where the Kumar resided in fact she "knew nothing", as she emphasised more than once, being then only a young "bou" or daughter-in-law of the house who would not go out very much in those days (*ibid, p 159, ll 25-26, p 162, ll 29-30 and 31-32*). She knew enough, however, to be able to say "It was from our house that I saw it (the dead body) was carried along the road below our house. Then the people carrying it turned to the left and went straight to the bazar and then passed by the road leading to the cremation ground" (*ibid, p 166, ll 5-8*).

For her to see the dead body from "Balén Villa" would require the procession to pass along what has been referred to as the Thorn Road route, as distinguished from the alternative route by Commercial Row (*Vol 18, p 313, l 24—p 314, l 12*), the Thorn Road route, as the learned judge points out, going past the Victoria Hospital and past the Cutchery Building opposite the Market.

It is curious, however, that not a question was asked of R. N. Banerjee and not a word said by him about the route of the procession, as most assuredly would have been done, if there was an idea at that stage of calling Gita Devi as a witness later.

The Thorn Road route would appear in fact to have been improvised for the first time with the examination of this lady,—an improbable route as it was, not only because of the *detour* it involved, but also because a dead body would not be usually carried along Hospital Road (*P W 969, Sasni*).

Mohan Das, Vol 11, p 98, ll 10-11 and p 102, ll 13-16), a fact which is not denied by D W 69, Surendra Mohan Chanda, though he says that "if you go by the Thorn Road, you have to go by the Hospital Road, but not necessarily" (Vol 13, p 224, ll 2-6)

A MERE "AFTER-THOUGHT" TO "FIT IN GITA DEVI"

That the Thorn Road route, as the learned judge says, is "an after-thought to fit in Gita Devi" (Vol 18, p 390, l 39), is clearly shown by the statement which Birendra Chandra Banerjee admits (Vol 15, p 351, ll 8-9) he had made in the Sripur cases "The procession carrying the dead body *after crossing Chowrasta* passed midway between station and the bazar" (Ex 350, Vol III, p 14, ll 36-38) There can be no doubt that Birendra meant, by this the Commercial Row route, and it is absurd to suppose, as Mr Chaudhuri seemed to suggest, that counsel cross-examining the witness understood him to refer to the other route, he was doing nothing of the kind, but was really seeking to establish the Commercial Row route by the cross-examination This very statement was put to another defence witness, F E Holland, D W 306, who himself spoke of the Thorn Road route as the one followed by the morning procession, and he said "The route this gentleman indicates is quite different from the route I indicate" (Vol 15, p 414, ll 19-20)

It is not a fact that before Gita Devi was examined, the defendants made any definite case about the procession having passed in front of "Balen Villa", though to give it as much publicity as possible, a suggestion that the bazar lay on the way to the cremation ground from the Kumar's house was made to their witness Haran Chandra Chakladar, who could not, however, say whether it passed by the side of the bazar or through the bazar (Vol 1, p 377, ll 15-19) Even if it went through the bazar, the procession need not have gone past the house of Gita Devi, unless it passed by the Cutchery Building, as to which there was no evidence and no suggestion at the earlier stage of the case

The key to the defendants' Thorn Road route would be the Cutchery Building, and not the bazar, the "bazar" being a loose expression which would be used to refer not merely to the stalls opposite the Cutchery Building, or to the open tract of level ground known as the "Market Square" or "Bazar Flat", and also, it may be added, as the "Parade Ground", but to the "Chowk Bazar" and "Chandmari" as well,— to indicate in fact the whole of the surrounding area stretching away from the "Market Square" on different sides, going even up to the Railway Goods Shed, if not beyond

Mr Chaudhuri made a futile effort to show that the plaintiff himself contemplated the Thorn Road route before Gita Devi's evidence, and referred for this purpose to a question which was put to D W Kanai Ram Mukherjee in cross-examination

"Q—You were proceeding towards the "Step Aside" from the Cutchery Building and they were proceeding towards the Cutchery Building with the dead body In this state you met together face to face?" (Vol 1, p 367, ll 32-34)

The witness replied in the affirmative, but it is perfectly clear that the question only meant that the procession was coming from the opposite direction, and involved no suggestion whatever that it passed the Cutchery

Building The witness had in fact already stated that he met the processionists as they came on the road, that is to say, the Rangit Road, "20 or 25 cubits away" from "Step Aside" he was going towards "Step Aside" from his quarters and they were proceeding towards the Chowrasta with the dead body, when they met face to face (*ibid*, ll 27-31)

Equally pointless was Mr Chaudhuri's reference to the cross-examination of P.W. Sitanta Kumar Bagchi with a view to show that he also indicated the Thorn Road route, but this witness was not speaking of the morning cremation at all, and even as regards the evening procession which he was describing, all that he meant was that a number of men joined from the Old Cutchery Building (*Vol 2, p 449, ll 28-29*) He was asked by what road the cremation party went to the burning ground, coming out from "Step Aside", and his answer as recorded in his original deposition in Bengali, and as I have satisfied myself, does not suggest that the procession passed *through* the bazar, as the translation in the printed record might lead one to suppose (*ibid*, p 448, ll 18-21)

Counsel was wrong in saying that there was virtually no cross-examination of Gita Devi on the question of route It is true that there was no suggestion in terms of the alternative route *via* Commercial Row, but it was definitely put to her that the road leading from "Step Aside" to the cremation ground along which, according to her, the procession passed, was not at all visible from her house (*Vol 3, p 166, ll 16-18*), which I consider to have been a sufficient challenge to her evidence As regards the defendants' earlier witnesses of the morning cremation, no case of route having been made by them, it goes without saying that the plaintiff was under no obligation to cross-examine any of them about it

I have no hesitation in recording my conclusion, in entire agreement with the trial judge, that the Thorn Road route was a pure invention of the defendants to suit the exigencies of Gita Devi's evidence, notwithstanding the surging tide of corroboration which set in afterwards

"CIRCUMSTANTIALITY" OF GITA DEVI'S EVIDENCE

As usually happens with such witnesses, Gita Devi, in attempting to invest her evidence with as much of circumstantiality as she could, only ended in landing herself in mis-statements, which, if Mr Chaudhuri was appearing on the other side, he would perhaps have himself described as false

She did not know anything about the Bhowal case before, but then she heard that the Kumar of Bhowal had come back on being restored to life, and read of it in newspapers also The Kumar had, however, "died in our presence" (*Vol 3, p 167, ll 22-25*) A discussion was perhaps inevitable after this "Would there be no discussion if a dead man comes back to life? We never heard of such a thing Why we alone, nobody has heard of such a thing!" (*ibid*, ll 33-36) A discussion did take place, and it was "elaborate", and lest there should be any mistake about it, it was joined in by practically the whole family—by her husband's elder and younger brothers, all of them, their wives, and also her mother-in-law, who were at the time staying in their Wellesley Street house in Calcutta (*ibid*, p 167, ll 29-33) Not only this, but whether on this or on another occasion, her husband's elder brother,—who she stated was then alive,—was also seized with righteous indignation, and said, "A dead man has come back to life I will go and depose",—the self-same feeling which later inspired the younger brother to give his belated statement to the Collector at Mirzapur (*ibid*, p 167, ll 25-28)

To be a story, the picture was not lacking in any particular only two small details were misplaced her husband's elder brother had died "somewhere about the beginning of the year 1918", and her mother-in-law in the month of October 1919, as stated by R N Banerjee (*Vol 3, p 107, ll 3-4 and 8-9*), whereas the Kumar of Bhowal "restored to life" had not come back until the end of 1920 or the beginning of 1921!

Gita Devi protested that there was no necessity for her to conceal anything in her deposition (*ibid, p 167, ll 14-15*) That is probably why in her examination-in-chief, *unasked* she said, the bier was covered with a shawl (*ibid, p 160, l 22*), and in cross-examination, again, when she was asked if the processionists had been saying anything as they passed along, she could not help repeating "I also saw that the dead body was being carried covered with a shawl" (*ibid, p 167, ll 3-5*)

In the procession, she saw her husband's elder and younger brothers, also many other people (*ibid, p 160, ll 24-25*) She did not know them all, and the 2 or 4 among them she knew, she could not name after such a long time, nor could she say if they were Brahmins or of any other caste And then all on a sudden, perhaps because she was anxious not to keep back anything from the court, she suddenly broke out "I will not say even if I know that"! (*ibid, p 167, ll 9-13*)

SUPPOSED CORROBORATION OF KASISWARI DEVI'S VISIT TO "STEP ASIDE"

Apart from Rabin's presence at the cremation, there was another important fact which Gita Devi was expected to prove, namely, her mother-in-law's visit to "Step Aside" on the morning of the 9th May She was, however, not in a position to give direct evidence of this from personal knowledge She only saw Kasiswari Devi leaving the house in the morning on receipt of the news of death (*ibid, p 160, ll 9-10*), and saw her returning at about 12 noon or 1 P.M. with the "widow" of the Kumar (*ibid, p 160, ll 29-31*) All the same she stated that her mother-in-law was in the Kumar's house that morning with the Rani (*ibid, p 160, ll 29-30*) This could, however, hardly be a fact on Gita Devi's own evidence on another point, as to which there was no need to make up a story, and naturally, therefore, she spoke the truth it was as regards the scene at Kasiswari Devi's house when the Rani came there that day, which clearly showed that this was the first meeting between the two after the Kumar's death (*Vol 3, p 168, ll 4-39*)

UNTUTORED EVIDENCE AS TO SCENE AT BALEN VILLA

The plaintiff admits this visit of Bibhabati to "Balén Villa", but not that she was brought over there by Kasiswari Devi His case is, she came with her uncle Suryya Naram, who was then living as a tenant in a part of the same house, with no women-folk, however, staying with him, as Bibhabati herself says in re-examination (*Vol 12, p 313, l 19*), and as is also the evidence of Shyamadas Banerjee (*Vol 1, p 271, ll 27-30*), and quite naturally, as the learned judge says, her uncle put her among the ladies at Kasiswari Devi's (*Vol 18, p 388, ll 38-41*)

I have no doubt whatever that the learned judge is absolutely correct in his finding Suryya Naram was admittedly at "Step Aside" when the

cremation party left Satyendra's entry in his own diary shows it, and shows also that Kasiswari Devi was not there that morning, there being no mention of her name at all it merely records "*Sejomaina* remained with Bibha at 'Step Aside' Self accompanied the body" (*Ex 399(2), Vol 1, p 307, ll 6-7*) Satyendra in his evidence again admits that Suryya Narain took his sister to "Balén Villa" during the day, though he would have Kasiswari Devi going with him as well (*Vol 16, p 430, ll 36-39*) Bibhabati, on the other hand, would make Kasiswari Devi her sole escort, and have nothing to do with her uncle (*Vol 12, p 204, ll 30-31*) The vehemence of her protest, however, shows to my mind that the truth lay just the other way

Q—Is it not a fact that next morning Suryya Narain took you to his house?

A—It is not a fact

I did not go to his house in the morning that day

Q—Did you not go to his house any time that day?

A—He used to live as a tenant in Kasiswari's house

I don't remember the address of that house but know it was a house of Kasiswari Devi, that is, of her husband Suryya Narain Babu was living in a part of Kasiswari Devi's dwelling house, which he had rented

Q—Did you at any time on Sunday go into the portion of the house rented by Suryya Narain Babu?

A—Kasiswari Devi took me to that house after mid-day" (*ibid, p 263, ll 6-17*)

Whether Kasiswari Devi was at "Step Aside" or not that morning, if Bibhabati was at all going to "Balén Villa", it is impossible to believe that her uncle who had been left behind to look after her should suddenly remove himself from the scene at the right moment,—in anticipation was it, one wonders, of the exigencies of his niece's case long thereafter?

As I have said, Gita Devi's untutored evidence as to what took place at "Balén Villa" that day seems to give the lie to her earlier statement regarding Kasiswari Devi's presence at "Step Aside" in the morning

A GRAPHIC AND A TRUTHFUL ACCOUNT

Gita Devi gives a graphic account of the scene, as the Rani arrived, wearing a coarse *dhuti* with a narrow border such as servants wear (*Vol 3, p 169, ll 4-6*)—(she spared herself a *than* or borderless *sari*, the proper wear for a Hindu widow, as she says she had none with her at Darjeeling) (*Vol 12, p 306, ll 12-14*),—and with no ornaments on her person (*Vol 3, p 168, ll 14-15*), the Rani's own story being that she had taken them off in her bath room at her own house where Kasiswari Devi had helped her to bathe (*Vol 12, p 204, ll 28-30*)

The Rani wept bitterly as she came, and after she was composed a little, Kasiswari Devi began to question her (*Vol 3, p 161, ll 2-6 and p 168, ll 11-12*) "What did your mother ask her?" "Mother said", Gita Devi replied, "Child! you have taken off your ornaments so soon?"

(I am taking the judge's translation, *Vol 18, p 389, ll 5-6*, which brings out the sense of the original much better than the English rendering in the printed record, *Vol 3, p 168, ll 7-8*)

Such a question, it is almost certain, could never have been put by Kasiswari Devi at her house, if she had been with the Rani at "Step Aside", practically helping her to take off the ornaments. Apart from this, as the learned judge points out, it is unthinkable that with a motherly lady like Kasiswari Devi present in the house, the Rani should be allowed to strip herself of her ornaments all at once the moment her husband's body was taken away (*Vol 18, p 388, ll 28-38*). Her very question is an expression of her bewilderment, and furnishes in fact the best answer to Mr Chaudhuri's fling at the learned judge that the latter was merely drawing on his imagination. He did nothing of the kind, but showed the truest understanding, and it is Mr Chaudhuri's clients who in fact proved themselves lost to all sense of propriety otherwise, in their anxiety to establish Kasiswari Devi's presence at "Step Aside" with the utmost certainty, they would not have put into the mouth of Bepin Khansama (D W 140) the realistic fiction they did regarding this particular episode.

BEPIN KHANSAMA'S REALISTIC FICTION

According to this faithful valet, the Rani had started flinging away her trinkets in her bed-room as soon as the dead body left the house. Some, however, still remained on her which she could not pull off, and these were removed from her person in the bath room when Kasiswari Devi took her there for a bath. Kasiswari handed these over to him, and these and the others taken off before, he tied up in a handkerchief. The bundle was afterwards made over by the Government Pleader's wife to Suryya Narain, the uncle (*Vol 14, p 492, ll 19-31*).

Even this witness could not help admitting the "custom" referred to by the learned judge, though, as the latter points out, he tried to deny it the next moment (*Vol 18, p 388, ll 35-36*). In answer to a question from the court during cross-examination he said

"To Court I do not know if widows are made to take off all ornaments immediately upon death. Ornaments are not kept after cremation—but I do not know" (*Vol 14, p 504, ll 33-35*).

When he says, ornaments are not kept after cremation, what he means is that they are taken off only after cremation.

The other parts of the story as given by Gita Devi also show quite clearly that Kasiswari Devi could not have met the Rani earlier that morning, as in that case she would not have put her the questions she is said to have done. How came the end to be so sudden? (*Vol 3, p 168, ll 22-23*) "Had not the brothers been informed?" (*ibid, ll 25-26*) "What was he suffering from?" (*ibid, l 34*).

The Rani's answers as spoken to by the witness again go to prove the truth of this evidence—her reference to the telegram from the Bara Kumar (*ibid, p 168, ll 27-29*), her speaking of Calvert's treatment (*ibid, l 24*), and her mention of "blood dysentery or something like that" as her husband's ailment (*ibid, ll 37-38*), as well as her reference to the purchase of a new elephant by the Kumar before coming up to Darjeeling (*ibid, ll 13-14*), a fact afterwards confirmed by the evidence of P W 942, Kshirode Mohan Chakravarty on which there was no cross-examination (*Vol 10, p 388, l 41—p 389, l 2*).

As I have said, there is no reason to disbelieve this part of Gita Devi's evidence, and I agree with the trial judge that "it has the ring of truth": "there is no mistaking it" (*Vol 18, p 389, ll 15-16*). Bibhabati's visit to

"Balén Villa" being an admitted fact, it had probably not been considered necessary to prepare the witness about it, and she was left free to speak the truth

In any case, there is no escape from the position that part of Gita Devi's evidence was deliberately false, and it is only reasonable to suppose that this was the part which she had to speak to under pressure. Speaking for myself, I place as little reliance on her as on her brother-in-law. I do not believe that she saw the funeral procession or saw R. N. Banerjee in it, or that Kasiswari Devi went to "Step Aside" on the morning of the cremation.

KASISWARI DEVI'S VISIT TO "STEP ASIDE" A SHEER CONCOCTION

The whole of the story about Kasiswari Devi is in my opinion a sheer concoction, and I doubt very much whether this lady had been to the Kumar's house at all on any day, or at any rate been a frequent visitor. The enquiries which according to Gita Devi her mother-in-law made of Bibhabati when the latter came to "Balén Villa"—what the Kumar was suffering from, which doctor was treating him, how the end was so sudden, or whether the brothers had been informed,—do not certainly suggest that Kasiswari Devi had been a daily visitor, sending "grapes and pomegranates" to tempt the Kumar's invalid appetite, as R. N. Banerjee and Gita Devi both so gushingly deposed.

According to both the son and the daughter-in-law, this good lady would be visiting the house of every Bengalee family at the station, rendering such assistance as she could (*Vol 3, p 116, ll 28-29*), but it is rather curious that she should keep no information about Suryya Naran Mukherjee, though he was a tenant staying in a part of her house, and not know that he was the Rani's uncle till after the Kumar's death (*Vol 3, p 165, ll 19-29*). She was certainly a benevolent lady, disposed to be friendly and helpful to people in difficulties, as was deposed to by both Sitanta Kumar Bagchi (*Vol 2, p 443, ll 37-38*) and Satya Dhenu Ghosal (*Vol 4, p 2, ll 23-34*) on the plaintiff's side, and by Kalipada Maitra (*Vol 1, p 350, ll 6-9*) on the side of the defendants, but as Ram Sing Subha said (*Vol 11, p 79, ll 23-24*), one did not know that she was in the habit of calling at the house of every Bengalee visitor to Darjeeling,—the exaggerated picture which the defendants would like to present for their own purposes.

It is not a fact, as Mr Chaudhuri supposes, that the learned judge based his finding against Kasiswari Devi's visit to "Step Aside" on the 9th morning merely or mainly on the ground of the improbability of the story about the taking off of the ornaments from the Rani. The defendants sought to prove her presence at the Kumar's house on that day not only by this story, but also by showing that she sent the sacred thread and the Ganges water to the cremation ground through the nurse Jagat Mohini, that she took over the Rani to her own house at mid-day and then reached her back in the evening after the cremation party's return, and generally, that she had made herself a familiar figure at "Step Aside" by her daily visits and her anxious solicitude for the Kumar. Each and every one of these facts, as has been shown, is disproved by the evidence of the defendants' own witnesses. On the top of all this, is the crowning fact that Kasiswari Devi is not mentioned at all by Satyendra in his diary. Satyendra, on his own account, started writing the diary about 9 or 10 days later, and if this lady had really played such an important part in the transactions of that day as she is now said to have done, it seems to be surprising and inexplicable that not a word should be recorded

about her doings in the diary, though it did not omit to record such momentous facts as that Satyendra had wired home for fruits

It is not necessary to deal with the evidence of R N Banerjee or Gita Devi any further, except only to point out that not a question was put to any of these witnesses if M N Banerjee, the Government Pleader, had made any proposal to Bibhabati regarding her making a donation to some charity in Darjeeling, as Satyendra could not help suggesting later under the stress of cross-examination (*Vol 16, p 522, l 29-33*),—a point I have already dealt with

OTHER "STEP ASIDE" WITNESSES

Turning now to the evidence of witnesses who say that they were on the ground floor and merely saw the corpse being brought down, it seems to me that this body of testimony is as unreliable as that of those who, like R N Banerjee or Jagat Mohini or Shyamadas Banerjee, speak to having actually seen the dead body upstairs. If mere numerical strength told, the defendants must doubtless be held to have proved this part of their case, but a mere chorus of voices does not necessarily produce a symphony of truth

It would be an unprofitable task to discuss the evidence of each of these witnesses—some of them did not get inside the house, but stood either on the road or at or near the gate, and still managed to see the body being carried downstairs by the wooden staircase at the end of the glazed verandah, while others merely noticed the body being brought out "from within" or through the room where they were waiting. The *khatia* again was placed by some under the portico, by some again at the end of the sloping path, and by yet others partly within the glazed verandah and partly under the portico. A little variation was probably introduced in the different versions on purpose, but it is evident they could not be speaking from genuine recollection

RAJENDRA NATH SETT

I might perhaps consider in some detail the evidence of one such witness Rajendra Nath Sett (*Vol 1, pp 300-313*), regarding whom Mr Chaudhuri made a special grievance that the learned judge had referred to his testimony only on the question of identity (*Vol 18, pp 174-176*), but not in connection with the morning cremation. Mr Chaudhuri maintained that this witness had been given a testimonial by the plaintiff himself as "a man of high position in society" whom there was no reason to disbelieve, relying for this purpose on the statement made by the plaintiff in paragraph 24 of his memorial to the Board of Revenue (*Ex J, Vol III, p 96, l 37—p 97, l 14*)

The witness was admittedly a friend of Satyendra, and was staying at Darjeeling in May, 1909, where he saw the Kumar for the first time on going to "Step Aside" with his friend (*Vol 1, p 300, ll 14-31*). He got the news of death from him at about 1 o'clock one night and went over at once with Bijoy Krishna Mukherjee and Tinkari Mukherjee, stopping on the way at Cutchery Building, from where 6 or 7 persons came out and joined them (*ibid, p 301, ll 4-16 and p 303, l 27*). They reached "Step Aside" almost at dawn, certainly after 3 o'clock (*ibid, p 301, ll 18-19*). He waited on the

ground floor, and some time after his arrival, he saw the dead body being brought downstairs, probably by Shyamadas Banerjee and Anukul Chatterjee amongst others (*ibid*, u 301, ll 23-37) He accompanied the funeral procession to the *sasan* where he saw the dead body cremated (*ibid*, p 301, ll 37-38 and p 302, ll 8-9) The body was identical with that of the Kumar to whom he had been introduced by Satyendra (*ibid*, p 301, ll 36-37)

If this evidence can be accepted, it should certainly carry the defendants the whole way There are, however, certain features about it which demand consideration

INTERVIEW WITH PLAINTIFF—A TRUE ACCOUNT IN PLAINTIFF'S MEMORIAL

In his memorial to the Board of Revenue the plaintiff recalls an interview which Rajendra Nath Sett had with him while he was staying at Bhowanipore, when, it is said, on hearing his answers to certain questions put to him, Rajendranath Sett was satisfied about the identity of the plaintiff as the second Kumar He then informed the plaintiff that he had attended a cremation at 2 P M which Satyendra had led him to believe, and he had honestly believed, to be that of the second Kumar, and he had no opportunity to recognise the body at the time, as it was burnt fully covered up He is said to have thereupon expressed his regret to the plaintiff that he had been misled into making such a statement in the course of the Government enquiry (*Ex J*, paragraph 24, Vol III, pp 96-97)

Mr Chaudhuri makes a point that the particulars of this interview were not put to the witness at all in cross-examination, but I have no manner of doubt the plaintiff gave a correct version of it in the memorial it would really be out of the question for him to have invented a fictitious tale for the purpose

One part of the story is in fact borne out by Rajendra Nath Sett's present evidence, as he admits having gone to see the plaintiff one day at Bhowanipore, which he no doubt says he did at the instance of Mr Dwarka Nath Chakravarty, and admits also having put questions to him to test his identity (*Vol I*, p 307, ll 17-31), and that being so, there is no reason to disbelieve the rest of the story as set forth in the memorial If the witness now chooses to give a different version in court regarding the cremation, the natural inference, as it seems to me, is not that the plaintiff had concocted an elaborate falsehood to hoodwink the Board of Revenue, but that the witness for reasons best known to himself has gone back upon the statement he had made to the plaintiff It may be taken for granted that a specific question put to him if he had made such a statement would have only elicited a categorical denial, and the absence of formal cross-examination seems to me, therefore, to be wholly immaterial

One has only to read his own account of the questions he put to the plaintiff and the answers he got out of him, and see how, as he says himself, he was "astonished" at the answers (*ibid*, p 307, l 36—p 308, l 16) Coupled with the fact that he felt impelled to question Satyendra about the matter thereafter, though the latter merely laughed it away, and coupled also with his subsequent visit to Mr Dwarka Nath Chakravarty who asked him "just to go and tell Satya to compromise this sort of litigation and put an end to the row and tumult", (*ibid*, p 308, ll 18-22), there is only one

conclusion which this can possibly lead to, and it is that whatever Rajendra Nath Sett may now say in the interest of Satyendra as to having gone and cremated the body of the second Kumar, that could not have been his belief or impression at the time he met the plaintiff at the Bhowanipore house, and most certainly, he must then have told him how he had made a mistake in stating anything to the contrary, and apologised to him for such mistake, as the plaintiff says in his memorial he did. To me the fact seems to lie on the surface that the same sinister influence which had caused him to believe at Darjeeling that he was witnessing the cremation of the second Kumar was operating again to produce a change in the conviction which he had expressed to the plaintiff.

PRESENT EVIDENCE TO THE CONTRARY A CONCOCTION

Rajendra Nath Sett's evidence itself gives sufficient indications that it was false and interested testimony. In his anxiety to give the fullest support to his friend's case, he went the length of saying that on going to "Step Aside" on two or three days to enquire about the Kumar, he came to know that the Kumar was suffering from *biliary colic* (*Vol 1, p 301, ll 1-3*), and he admitted that he heard this from Satyendra himself (*ibid, p 304, ll 11-12*). Coming to give evidence later, his friend, however, gave him away completely, being of course driven to do so by the exigencies of the case with which he was faced in cross-examination. "Biliary colic" was not in the telegrams from Darjeeling to the Bara Kumar, and Satyendra was obliged to say that he came to know the right expression only later on, but had no idea of it at the time. He did not know the "technical name" (*Vol 16, p 481, ll 37-40 and p 482, l 11*).

Then, again, Rajendra Nath Sett says that when he went to see the plaintiff at the Bhowanipore house, he was very much "surprised" to see a man with "red hair" and "tawny eyes" like those of the Kumar, and wondered if he was the plaintiff, but learnt later that he was no other than the Kumar's nephew Buddhu, son of Jyotirmoyee Devi, whose proper name was Jalad Mukherjee and who unfortunately did not live to give evidence for the plaintiff (*Vol 1, p 307, ll 31-35*). The witness admits that the Kumar had red hair and tawny eyes, and also that this was a distinctive feature of recognition (*ibid, p 308, ll 33-37*). And yet he utters the deliberate falsehood, for such it cannot but be, that

"Seeing the nephew I thought that there was some similarity with Kumar,—but then seeing that gentleman I found no similarity in my mind" (*ibid, p 308, ll 24-25*)

This he must have done on purpose to belie, if he could, the plaintiff's statement in the memorial, but in my view, he merely exposes himself in the attempt, and if anything, lends unwilling, but nevertheless the strongest support, to the plaintiff's story.

It is hardly necessary to refer to other parts of his evidence which must necessarily be false, if I am right in my conclusions regarding the matters he speaks to, as for instance, his story that he received a "chit" from Satyendra at about 1 A.M. in the night (*ibid, p 301, l 4*), or that he brought along Anukul Chatterjee with him from Cutchery Building (*ibid, p 303, ll 27-28*), or that he came to "Step Aside" at night and found 15 to 20 persons present (*ibid, p 309, ll 27-28*).

NO ANSWER TO CASE OF SUBSTITUTED DEAD BODY

To sum up now the effect of the defence evidence regarding the body remaining upstairs or the face lying exposed, Mr Chaudhuri's clients have, in my opinion, wholly failed to establish either of these facts. There was a dead body no doubt at the house since the early hours of the morning, but it lay on a cot on the ground floor and was covered over with a sheet from head to foot, as Dr Acharyya had seen. So far as the Rani was concerned, she was "having fits" upstairs, for which, as Satyendra notes in his diary, the doctors having "melted away", the two nurses who had been called in to attend the Kumar were kept on. The situation, so far as one can discern in spite of all the attempt to befog it by a cloud of false witnesses, was certainly not such as to have rendered the introduction of a dead body into the house some time before early morning an improbability, or "utter impossibility", as Mr Chaudhuri would like to put it. Should any questions have been asked, all that need have been pleaded was utter helplessness in the face of storm and rain, which, driving away the local *sasan-bandhus* from the cremation ground, left the "Step Aside" party no option, however unfortunate, but to return with the dead body for the night, to take it out again the next morning.

Mr Chaudhuri complains that such a case was not put to Bibhabati Devi in cross-examination, but it was certainly put to her brother if the body of the second Kumar had been taken away in the evening, brought back during the night and taken out again the next morning, which he denied (*Vol 16, p 540, ll 35-36*). To Bibhabati the suggestion was, and I consider that to have been enough, that she was in "fits", and all that she saw on the next morning was a covered body downstairs while she was on the upper floor. She in her turn denied it (*Vol 12, p 278, ll 3-12*). Satyendra was also asked about his sister's "fits", and admitted having heard about her death of the same. He did not think that the fact of her having fits cut through the case he had made, and he repudiated the suggestion that he had wiped out the "fits" to make Bibhabati sit by her husband's bed-side all the time (*Vol 16, p 540, ll 29-34*).

As I have shown already, the attempt to counter the possibility of the introduction of a dead body during the night by bringing Kasiswari Devi into the house the next morning has signally failed.

Suryya Narain's presence at "Step Aside" early in the morning was doubtless intended to serve the same purpose, but he would certainly not be insisting on taking the cloth off the dead body to have a last look at the face, or refusing to accept any explanation which his nephew might offer to account for the failure of the evening cremation. From Satyendra's point of view, of course, the earlier his uncle arrived, the better it would be, and this probably explains the disfiguring of the letter "3" in his entry in the diary "Sent behara for *Sejomama* who came at about 3 in the morning" (*Ex 399(1), Vol 1, p 306, ll 12-13*), which necessitated a bit of interesting cross-examination.

"The figure '8' here is over-written. It looks like 3 over-written into 8. Looking at this I think Surja Narain Babu came at 3 A.M., but I must read the whole of it (Witness does so). I am inclined to 3 A.M.—my recollection is he arrived at 3 A.M."

(Sees with a magnifying glass as the witness desires)
It looks like 3—3 was the original figure

"Q—It could not have been 8 at any time, nor does it look 8?

A—It looks like 8

(Sees through a magnifying glass)

I do not see that some figure, not 8, was altered to 3

I see it was 3 altered to 8

The alteration from 3 to 8 is not in deeper ink. The other writing is not in deeper ink. Originally the lines of the figure 3 were as broad as they are now. Not broader than the lines of the letters making up the rest of the writing, because I find other letters like that, some letters like that, *e g*, "&" below the 3 under consideration.

To Court

The inner edge of the curved lines of 3 is deeper than the rest of the line—that is true of every line" (*Vol 16, p 498, ll 12-29*)

INDISCRIMINATE CALL FOR SASAN-BANDHUS

Another fact on which some stress was laid by Mr Chandhuri to repel the suggestion of cremation with a "faked" body was what he described as an "indiscriminate" call for *sasan-bandhus* in the morning from all over Darjeeling, though there is no direct evidence on the point, but assuming it to have been so, there need have been no fear that anyone who had attended the evening cremation would turn up again in the morning, and even if any did, there would be no lack of a likely explanation to silence all questions.

PROCEEDINGS AT THE SASAN

It remains now to consider the proceedings which are said to have taken place at the *sasan*. As pointed out already, it is admitted that the body was fully covered up all the way during its journey from "Step Aside" to the cremation ground. Thus, for instance, Bijoy Krishna Mukherjee says "When the procession started with the dead body, the dead body was covered from head to foot" (*Vol 1, p 319, ll 33-34*), and Mohendra Nath Banerjee also states "The dead body was covered on the way. So on going there, the covering was taken off" (*ibid, p 338, ll 27-28*).

WIDEST PUBLICITY GIVEN TO FUNERAL PROCESSION

The defendants were anxious from the very beginning to give the procession "the widest publicity" they could. This was in fact put almost as a leading question to Haran Chandra Chakladar in examination-in-chief, to which the witness of course responded with the utmost alacrity (*Vol 1, p 377, ll 23-26*), he having somewhat failed to catch the point of the earlier questions, directed to the same end, but in a less direct form, asking, first, if the bazar lay on the way to the *sasan* from the Kumar's house (*ibid, p 377, ll 15-16*), and then, when in answer, without being definite, he merely said

that the cremation party had to pass either by the side of or through the bazar (*ibid*, ll 17-19), asking next, more pointedly, if he remembered that pice etc were distributed while so passing (*ibid*, ll 20-21) Nobody will be deceived by Mr Chaudhuri's suggestion that the object of the questions was to put the defendants' case of the Thorn Road route, and not to elicit evidence of "utmost publicity" for the funeral procession

It will be seen that this distribution of coins etc was an unvarying feature of the evidence of every one of the defendants' cremation witnesses almost without exception There is no reason to doubt that it had taken place as a fact, and it was certainly considered by Satyendra to have been an important enough detail to be duly chronicled in his own record, and not allowed to escape from memory "Rs 200 distributed to the poor on the way to the funeral ground" (*Ex 399(2)*, Vol I, p 307, ll 5-6) It also figured prominently in "The Story of the Sadhu", there being a special question for it in the interrogatories circulated with the story "Q 7 Was anything done during the procession?" with an N B added thereunder—"Whole rupees and small bits of coin were scattered and given to the poor during the procession" (*Ex 443*, Vol II, p 240, ll 28-29)

This was in fact all that the plaintiff meant when he said in his memorial to the Board of Revenue that the cremation had been carried out "with full show of a ceremony" (*Ex J*, Vol III, p 92, ll 31-34), the words used having no reference whatever to the supposed performance of full rites at the *sasan* itself

OBJECT BEHIND IT

The learned judge considers the very pomp and publicity attending the procession to be an element of suspicion (Vol 18, p 385, ll 39-42), but to Mr Chaudhuri the argument is nothing but "absurd" and "unintelligible" It seems to me, however, looking at the matter from a plain and common-sense point of view, that the whole object of staging a second funeral would have been lost unless the widest advertisement was given to it, without of course doing anything which might involve any risks of exposure The greater the publicity of the morning procession, the more likely was it to convey an impression of its absolute genuineness, and the more effectively calculated to suppress any possible whispers of a "scandal", either at Darjeeling or at Jaidebpur, arising out of the *contretemps* of the previous night It would doubtless serve to conceal the fact of actual disappearance of the body, and merely suggest that the body had to be brought back at night for unavoidable reasons, and then taken out again in the morning for cremation

There can be little doubt that if necessary, and if only they could avoid the chances of exposure, the "Step Aside" party would for a similar purpose have also gone through the whole gamut of shastric rites and ceremonies at the burning ground, but this was apparently considered to be neither indispensable nor a safe course to adopt

STORY OF RITES AND CEREMONIES AVOIDED AT EARLIER STAGE

The defendants, however, though somewhat avoiding the mention of rites at an early stage of the case, were very particular later in giving evidence of the performance of such rites to the fullest extent, but unfortunately their witnesses overdid their part in purporting to recall the

proceedings of that day 25 years later, as if they were still fresh in their memory, giving one the inevitable impression that while pretending to give an account of what happened on that particular occasion, they merely recounted the incidents of a normal Hindu funeral, with such variations as were probably suggested to them by their own ideas, or by their actual experience of any cremations they might have attended

Thus, for instance, it will be seen that Bijoy Krishna Mukherjee said, contrary to the evidence of other witnesses, that the body had been laid on the funeral pyre *with face upwards*, but this was only because he thought "We Hindus do not place the dead body with face downwards" (*Vol 1, p 320, ll 8-10*), which, however, was not the rule, for, as Kalipada Maitra stated from what he had seen at his own mother-in-law's cremation "In the case of males the dead body is placed with face downwards, and in the case of females with face upwards" (*ibid, p 353, l 40—p 354, l 4*), and so also said Tinkari Mukherjee from his experience of another cremation he had witnessed (*Vol 1, p 439, ll 21-22*) Kalipada Maitra's actual observation, however, betrayed him in respect of another particular by making him introduce "*Antarjali*" as part of the rites at the Kumar's funeral (*ibid, p 349, ll 18-19*), apparently on no better ground than that this had been done in the case of his mother-in-law (*ibid, p 353, ll 30-31*) "*Antarjali*", however, as the witness himself explained, was a ceremony possible only where there was a river, in which the body was made to touch the river-water, but realising probably the incongruity in his evidence, he added that where there was no river, the ceremony was observed by holding the body in a slanting position and bathing it with water brought from somewhere (*ibid, p 357, ll 15-20*)! Haran Chandra Chakladar, again, who spoke about the bathing of the Kumar's body at the *sasan* (*Vol 1, p 378, l 6*), admitted that this was what he had seen being done at every cremation he had attended, though he did not know what the provisions of the shastras were in this respect (*ibid, p 394, ll 14-19 and l 30*) Mohendra Nath Banerjee also who spoke of the rubbing of ghee and the bathing of the dead body and the recital of *mantras*, evidently did so from his experience of his wife's cremation (*Vol 1, p 342, ll 11-14*)

Apparently, in the course of the Lindsay enquiry no importance was attached to the performance of rites at the cremation ground neither in the questionnaire circulated with "The Story of the Sadhu" (*Vol II, p 240*), nor in the later interrogatories framed by R C Datta (*ibid, p 246*), is there a single question to be found touching this point Nor would it appear was any question raised about it at the Darjeeling enquiry when statements were being recorded by N K Roy, though some of the witnesses no doubt try to say that this had been done and rites actually mentioned by them at that stage, such as Kalipada Maitra (*Vol 1, p 357, ll 5-13, p 358, ll 1-3 and ll 31-37 and p 359, ll 1-4*) and Kanai Ram Mukherjee (*Vol 1, p 374, ll 25-30*) This strikes me, however, as obviously false evidence, and it seems a pity that the statements of such witnesses made to N K Roy were not produced by the defendants to repel such a suggestion on the part of the plaintiff Only three statements recorded by N K Roy have been put in in evidence they are from persons who have deposed on behalf of the plaintiff in the case, Kshetranath Mukherjee, since known as Swami Oankarananda (*Ex Z(27), Vol II, p 227*), Basanta Kumar Mukherjee (*Ex Z(42), ibid, p 234*) and Nalini Kanta Chakravarti (*Ex Z(342), ibid, p 236*), and in none of these there occurs a word about the performance of rites now so elaborately described by the defence witnesses, except that they all refer to the burning of the body, and Kshetra Nath Mukherjee says it was burnt with firewood, ghee, etc, though, by way of contrast, it may be noticed, each

of the statements expressly mentions the scattering of coins on the way during the procession

A "DANGEROUS TOPIC" IN VIEW OF PLAINTIFF'S CASE

It is absurd to suppose that the witnesses would, or were expected to, volunteer information on the particular point of performance or non-performance of rites, unless there was a specific question about it, whether or not they were asked generally to state what they knew about the cremation. If, as is the plaintiff's case, the cremation was in point of fact held without the usual Hindu rites, this to my mind would only make it probable that the defendants, whether in framing their interrogatories or in examining witnesses before the interrogatories were framed, should studiously avoid the question of rites as a dangerous topic, which, for aught they knew, might only result in eliciting inconvenient facts. It would be the same fear operating on them which had led to the avoidance of all reference to the question of the old or the new *sasan* at Kagjhora,—the query in Q 5 in R C Datta's interrogatories as to which cremation ground was used (*Vol II*, p 246), being, as it seems to me, directed, not to either of these two alternative sites, but merely to find out whether it was the Kagjhora *sasan* or any of the other cremation grounds in Darjeeling, such as are referred to, for instance, by D W 13, Lofts (*Vol 12*, p 403, ll 23-25) and P W 967, Ram Sing Subha (*Vol 11*, p 69, ll 12-13).

It is worthy of note that the plaintiff's case from the beginning was that no rites had been performed, this being not only the clear trend of their cross-examination of the defendants' cremation witnesses but also the evidence of Ram Sing Subha even in the Defamation Case, as set out in paragraph 28 of the memorial to the Board of Revenue (*Ex J*, *Vol III*, p 99, ll 23-28), where he is stated to have deposed as follows —

"I also found a tin of kerosene oil (a very unusual thing for purposes of cremation of the dead body of a Hindu) The dead body was not bathed. The white cloth was not removed. With the white cloth the dead body was placed upon the pyre. So nobody could see the face of the dead body. Oil and ghee was not rubbed in the dead body at the cremation ground."

To the same effect is the testimony of Ram Sing Subha in the present suit (*Vol 11*, p 67, ll 18-23).

PLAINTIFF'S WITNESSES

Among other witnesses of the plaintiff who give similar evidence is Swami Oankarananda Giri, P W 603 (*Vol 8*, pp 93-100), who, as already stated, gave a statement to N K Roy in May, 1921 (*Ex Z(27)*, *Vol II*, p 227). He says that the dead body was laid on the pyre wholly covered up, and it was not a fact either that the body was bathed, or that any Hindu rites were observed, or even a *pinda* (funeral cake) offered (*Vol 8*, p 94, ll 31-32 and 40-41). There was no *mukhagni* proper, fire having been applied to the mouth over the cloth which covered it.

Another such witness is Basanta Kumar Mukherjee, P W 823, (*Vol 9*, pp 383-388), whose statement to N K Roy is *Ex Z(42)*, (*Vol II*, p 234). He also states that the body was placed upon the *chita*, covered up, cloth and

all, in the same condition in which it had been brought to the *sasan* there was no rubbing over with ghee, no bathing, no putting on of a new cloth and no offering of *pindas* before *mukhagni* (*Vol 9, p 384, ll 26-31*)

Still another witness who had similarly made a statement to N K Roy (*Ex Z(342), Vol II, p 236*), is Nalini Kanta Chakravarty (on commission) (*Vol 11, pp 318-328*), whose evidence likewise is that the body was burnt covered from head to foot, without being besmeared with oil or bathed, in fact without the observance of any rites (*Vol 11, p 319, ll 20-22 and 30-31*)

Of these three witnesses, the learned judge holds that the last mentioned is "utterly discredited" by his former statement, but as regards the other two, there is in his opinion no material discrepancy in their present evidence which he accepts (*Vol 18, p 381, ll 11-37*)

Mr Chaudhuri suggests that these witnesses must have been all tampered with by the plaintiff and made to give evidence in direct contradiction to what, according to him, they had voluntarily stated before the Darjeeling Deputy Magistrate,—and stated, be it noted, at a time when the "story of the sadhu" had not yet taken formal shape. As regards Nalini Kanta Chakravarty, learned counsel would in fact rely on his former statement, as if this was substantive evidence, merely because before being shown the statement, the witness said that what he had told N K Roy was "nothing but the truth" (*Vol 11, p 325, l 25*), though on his attention being called to specific passages, he replied, saying—"I do not remember what I said then. But when it is recorded here, it may be that. That is, I might have said so" (*ibid, p 326, ll 25-26*), or, "I see it recorded there. But I don't remember what I said" (*ibid, p 326, l 31*), or, "When he has noted it, I might have said so" (*ibid, p 327, l 13*), or, again, "Probably he might not have asked me. I must have told—if he had asked me" (*ibid, p 327, ll 29-30*)

NO CONTRADICTION WITH PREVIOUS STATEMENTS

As I have said, I find it difficult to believe that any of these witnesses could have been asked about the observance of rites and ceremonies when they gave their statements to N K Roy. They are all agreed in saying that they must have answered only such questions as had been put to them. Admittedly the questionnaires had not yet been prepared, but even if one were to accept Mr Chaudhuri's suggestion that the Darjeeling examination could not but have proceeded on the lines of some such questions, it seems to me that the interrogatories which could have been anticipated at that stage would be only those that came to be framed later by Rai Bahadur Sasanka Coomarr Ghose (*Vol 11, p 240*), and not those subsequently drawn up by R C Datta (*ibid, p 246*), seeing that the Rai Bahadur was present on the spot at the time. It will be observed that the Rai Bahadur's questionnaire does not contain any such general question as q 9 of R C Datta. "The deponent should be asked generally if he remembers any other facts connected with the illness, death or cremation of the Kumar." The Rai Bahadur has a question No 6 "Can you remember any incident either at the house before the procession started or during the procession or during the cremation?", but this can hardly be said to have the same general content.

And yet it is surprising that learned counsel of the eminence and experience of Mr Chaudhuri should have deliberately sought to mislead the witnesses by suggesting that the specific questions in R C Datta's interrogatories, particularly those numbered 8 and 9, had been put to them by

N K Roy If I may say so, the learned judge's comments on the point are more than justified (*Vol 18, p 317, ll 12-16*) It is no wonder that the witnesses, deposing 13 years later without a previous opportunity of seeing their former statements, should unwarily walk into the trap so adroitly laid for them

In the circumstances, I am not disposed to attach any importance to some of the answers which they were led to give in cross-examination

SWAMI OANKARANANDA

To take Swami Oankarananda, for instance, it appears that on being shown in court the printed questionnaire, not, be it noted, of Rai Bahadur Sasanka Coommar Ghose, but of R C Datta, he stated at once that he could not recollect at this distance of time if N K Roy had put these questions to him (*Vol 8, p 96, ll 40-42*), but on counsel still persisting in his suggestion, the witness said that the interrogatories shown to him included some of the questions put, and perhaps did not include others (*ibid, p 97, ll 1-2*) Mr Chaudhuri would not leave him there, but went on to question him specifically with reference to the interrogatories, and then witness said "The questions 1 to 7 on this paper were certainly put to me, but about the questions Nos 8 and 9 I have no definite recollection" (*ibid, p 97, ll 2-4*) Not content, counsel still persevered till he was able to elicit the following answer "Probably I said that his face was covered I did not tell him that I had never seen so extraordinary a Hindu funeral before I said that there was no ceremony at all" (*ibid p 97, ll 7-9*)

There can be no doubt that this was trying to extract out of the witness something which is admittedly not to be found in his previous statement, but I am clearly of opinion that one must accept what is contained in the statement itself, and not the witness' present forced recollection of it That was in fact counsel's final suggestion to the witness himself, which the latter accepted

"Q—That the face was covered, that there were no rites, that it was an extraordinary funeral are not there?

A—No

Q—I put it to you that your former statement gave no indication whatsoever of the kind of extraordinary cremation you say it was?

A No" (*ibid, p 97, ll 13-18*)

In my judgment, the sole question to consider about the former statement is whether there is anything in it which may be supposed to contradict his present evidence, and I agree with the learned judge that the answer must be in the negative The statement does not certainly show either (1) that the witness had seen the face of the dead body uncovered, or (2) that due shastric rites had been performed, or (3) that the funeral was not an extraordinary one

Swami Oankarananda is no doubt recorded as having stated to N K Roy that "the body was that of a stout, strong and fair complexioned man",—a description which bears almost a family likeness to the "fair complexion", "stout build" and "strong physique" of Rai Bahadur Sasanka Coommar Ghose's story of the sadhu (*Vol 11, p 240, ll 2-3*), and is almost suspiciously

suggestive of the source from which it emanated, but as he explains in his evidence, when the corpse was placed on the *chita* the covering over it slipped off, exposing a part of the body (Vol 8, p 93, ll 29-31 and p 94, ll 32-33), and he got the impression that the man was "fair" (*ibid*, p 100, ll 21-22) he had not seen the complexion at "Step Aside" (*ibid*, p 96, l 15). This statement no more indicates that the body lay with the face exposed than his other statement that a "Kumar's man" set fire to the face of the deceased, which certainly does not mean that the fire might not have been applied over the cloth on the face (*ibid*, p 96, ll 22-23). On the other hand, the story he relates about Nathu Dome trying to take away the apparel of the Kumar would be consistent with the plaintiff's case and the witness' present evidence that the body was laid on the funeral pyre with his clothing on. As for the performance of rites, this is certainly not indicated by the statement that the body was burnt to ashes with firewood, ghee, etc., the ghee, as he explains, having been put on the fire and not on the body (*ibid*, p 96, l 31). Generally, as to the question whether it was or was not a normal funeral, he must doubtless have been struck with the unusual character of it, but the Kumar's own people having been present and carried it out in that manner, it would not be for him either to reason why or to make reply.

I can find no reason whatever for not accepting the evidence of this witness, a man who had forsaken the world and forsaken his name, having adopted "sannyas" after two years' *brahmacharyya* at Hardwar, with no wife and no children, and with no earthly attractions to tempt him from the path of virtue (*ibid*, p 93, ll 11-14), say what Mr Chaudhuri will.

I cannot help remarking that if the facts were really as the defendants pretend they were, it should have been for the people who had rushed up to Darjeeling to pin down witnesses at the earliest stage to signed statements in the presence of a Magistrate, to get these deponents to clear up all possible points of importance which might be supposed to affect their case. According to Mr Chaudhuri's clients, the fact of the face having remained uncovered both at "Step Aside" and at the *sasan* was so strikingly obtrusive that none of their witnesses were able to let it go out of their mind, and still it is curious that this should not have been brought out clearly in any of the Darjeeling statements. They had not forgotten to ask about the scattering of pice in the procession, and yet asked no direct questions as to whether the face was exposed or the usual rites were observed!

BASANTA KUMAR MUKHERJEE

As regards the next witness, Basanta Kumar Mukherjee (Vol 9, pp 383-388), in his statement to N K Roy (Vol II, p 234), not only did he not say that he had seen the face, but he stated on the other hand that the body "was brought out on a cot of the house covered with a cloth", and expressly mentioned that he "did not notice the face of the corpse to which fire was set by a young man who was found weeping bitterly", by which, as he explains, he meant he had not seen the act of *mukhagni* (Vol 9, p 387, ll 12-13 and 27-29). He did not even speak to the firewood and ghee etc., mentioned by Swami Oankarananda, with which the body was burnt.

In his case, too, there was the same attempt to force him to admit that the questions in R C Datta's set of interrogatories had been put to him by N K Roy (*ibid*, p 386, l 11 and p 387, l 3). He said, however, he could

not recall the questions, but could only speak to his statement (*ibid* p 386, ll 12-13), though quite honestly he expressed himself unable to deny after such a long lapse of time that such questions might have been asked (*ibid*, p 387, ll 4-5)

Mr Chaudhuri had even the temerity to suggest to him that he had been asked by N K Roy about the route of the procession, but that he had given no answer! The witness was emphatic in his denial "Impossible", he said, "What he asked I must have answered" (*ibid*, p 387, ll 22-24)

I have no hesitation in holding that Basanta Kumar Mukherjee's evidence stands wholly unshaken. Much as counsel might have tried to make the jade wince, his withers were unwrung.

NALINI KANTA CHAKRAVARTY

As regards Nalini Kanta Chakravarty (examined on commission) (*Vol* 11, pp 318-328), as I have indicated, it is doubtful if his former statement can be treated as substantive evidence at all. He is supposed to have said to N K Roy that at the cremation ground the dead body was uncovered (*Ex* Z(342), *Vol* II, p 236), but in his present evidence he says that such a statement would be "absolutely false" (*Vol* 11, p 326, ll 1-3 and ll 29-33). He admits that the cremation had appeared to him "very unusual", but he thought that there might be different practices in different parts of the country (*ibid*, p 322, ll 25-28), and he adds that he must have told N K Roy about the abnormal funeral, if he had been asked about it (*ibid*, p 327, ll 29-30). Speaking for myself, I should certainly be prepared to accept what he now says in preference to what he was probably made to say at Darjeeling, though the learned judge, on his part, in his evident anxiety to be as fair to the defendants as possible, was quite willing that this evidence should be left out of consideration altogether (*Vol* 18, p 381, ll 11-13 and l 22).

DEFENCE EVIDENCE OF CREMATION RITES AND CEREMONIES SHYAMADAS BANERJEE

Shyamadas Banerjee on behalf of the defendants gives a fairly full account of the rites which are supposed to have been performed at the *sasan*. The clothes were taken off, the body besmeared with ghee, and then bathed with water—brought from the *ghora*, as he says (he had apparently forgotten the Ganges water),—a new cloth then wrapped round and the sacred thread put on, after which the body was lifted on to the pyre, with still another cloth put on it. Gold, silver, etc. were then placed at the "nine doors of the body" before the final act of *mukhagm* or setting fire to the face was done (*Vol* I, p 257, ll 29-37). By some mischance, the recital of the *mantras* appeared to escape his recollection, though he remembered that Sashi Banerjee, an accountant at Darjeeling, "perhaps" acted as priest (*ibid*, p 261, ll 4-5), this Sashi Banerjee being presumably the man who with Satya Prosad Ghosal afterwards signed a certificate of cremation (*Ex* Z(202), *Vol* I, p 183).

His memory for details, however, betrayed the witness into making a statement as regards a small matter, which amounted to an indirect admission of the truth of the story told by the plaintiff's witnesses of the morning cremation. He said that one or two tins of ghee,—and he even remembered it was "*Bhaisa ghee*" (or ghee prepared from buffalo milk),—had to be

specially requisitioned to be thrown into the fire in order to make the body burn quickly (*Vol 1, p 260, ll 35-38*),—a fact confirmed later by other defence witnesses, such as Rajendra Nath Sett (*Vol 1, p 302, ll 26-27*), Kanai Ram Mukherjee (*Vol 1, p 370, ll 18-26*) and R N Banerjee (*Vol 3, p 109, ll 1-2*)

Mr Chaudhuri was very anxious to make out that the plaintiff's witnesses who had given statements at Darjeeling must have been asked about the performance of rites, but it will be seen that this witness of his Shyamadas Banerjee admits that Lethbridge had not asked him anything about it, nor did he have anything to tell him on the point (*Vol 1, p 264, ll 9-10*), and he was not the only one among the defendants' witnesses to make such admission. Some of them no doubt pretended otherwise, as for example, Mohendra Nath Banerjee, who first stated that "all those things were not asked then", and then pulled himself up, saying that "being absent-minded" he had made this statement. "I am now saying from memory that I stated all those facts before Mr Lethbridge"! (*Vol 1, p 335, ll 21-23 and 30-35*) Kalipada Maitra, again, when asked if he had stated to N K Roy anything about the body having been burnt with the help of ghee, fuel, resin and sandal-wood, could only express his bewilderment by asking himself "Did I tell these words or not?" The plaintiff's pleader asserting, "That is my question", the witness pathetically declared, "I do not understand that"! The question had to be repeated, and then he said that as far as he remembered, Mr Roy had asked him "In what way was the dead body burnt?" (*Vol 1, p 358, l 31—p 359, l 2*) Kanai Ram Mukherjee was similarly asked if he had said anything to N K Roy as to the rubbing of ghee, bathing, uttering of *mantras*, or performance of *mukhagn*, and his answer first was, "Mr Roy did not put all these questions to me and I did not answer", but he forthwith added, "I think I spoke about *mukhagn* and uttering of *mantras* etc"! (*Vol 1, p 374, ll 25-29*)

It seems to me, as I have said before, that if full rites had been observed at the cremation, as is now alleged by the defendants, they would not have allowed themselves to miss such an important fact either at the stage when statements were being recorded at Darjeeling, or in the course of the enquiry which came to be initiated later by Lindsay, and there would not have been such evasive answers from their witnesses

BIRENDRA CHANDRA BANERJEE

The most vivid picture of the proceedings at the *sasan* comes from DW 290, Birendra Chandra Banerjee (*Vol 15, pp 314-377*), a man whose performances in the witness box could be described as unique, if only the defendants had not kept him in countenance by producing many a prototype of his. He had deposed in the Sripur case (*Ec 350, Vol III, pp 5-17*), and there is hardly a statement on any material point in that deposition on which he has not shamelessly gone back in his present evidence—the best apology he could offer was "I did not realise that I told an utter falsehood then" (*Vol 15, p 346, l 40*). It is this witness who had kept Calvert in the house from 4 to 12 P.M. on the 8th May (*ibid, p 346, ll 21-35 and p 355, ll 14-17*), though it is now admitted by the defendants that Calvert went home after dusk. (*ibid, p 347, ll 1-4 and p 355, ll 20-21*), and it is he, again, who, it will be remembered, had made Calvert send the "telegram of death" to the Bara Kumar (*ibid, pp 347-349*)

PERFORMANCE OF MUKHAGNI

It appears to be a fact that the *mukhagn*, or the show of it, was performed by this man Satyendra duly keeps a note of it in his diary—"The fire was set by Birendra" (*Ex 399(2), Vol I, p 307, l 7*) It is not, however, without significance that Rani Bibhabati was not taken down to the *sasan* for this last rite to her deceased husband, which was at once her duty and her right by preference under the Hindu shastras. This was an omission which could not be explained by saying that she was physically unfit at the time, the defendants' own evidence being that she was in a condition to go to "Balen Villa" that morning, nor would it be a sufficient excuse merely to show that on the death of Bara Kumar or of Chota Kumar, the *mukhagn* of either brother was not performed by his widow. In the case of Chota Kumar, there is the evidence of the Chota Rani herself that on the day of her husband's death which took place at the Nalgola House at Dacca, she was laid up with fever with a temperature of 102 and was removed by the Civil Surgeon to a house at Imamganj under the Collector's orders (*Vol 14, p 24, ll 11-14 and 19-21*), and it appears, as stated by Ananta Kumari Devi, that the *mukhagn* was done by Akshoy Roy, an agnatic relation, at Jaidebpur where the body was cremated (*Vol 1, p 480, ll 20-23*). At the time of Bara Kumar's death which occurred at Jaidebpur, his Rani was no doubt present at the Rajbari (*Vol 1, p 480, ll 8 and 16*), but there is nothing to show that she had no sufficient reason for not attending the cremation, or that near enough kinsmen like his own younger brother were not there to perform the *mukhagn* the Bara Rani, though examined as a witness for the plaintiff, was not questioned about it herself.

BIRENDRA'S QUESTIONABLE RIGHT TO PERFORM MUKHAGNI

Quite different was the position at Darjeeling. Not only was there no excuse for not taking the second Rani to the *sasan* on the ground of any alleged physical incapacity on her part, but her presence at the cremation was both necessary and proper, seeing that no relation, agnatic and cognatic, was available there to take her place for this important rite. And yet nobody thought of her at all in this connection, Shyamadas Banerjee's evidence being that when the "Step Aside" party started for the burning ground, no one suggested that Bibhabati should go (*Vol 1, p 260, ll 14-16*),—a fact which one finds it a little difficult to reconcile with the defendants' professed anxiety for the due observance of full shastric rites down to the sacred thread and the Ganges water. Haran Chandra Chakladar merely remembered a talk between Satyendra and some other persons, not himself, at the *sasan* as to whether the Kumar's wife should come and perform the *mukhagn*, and Satyendra saying that she was too overwhelmed (*Vol 1, p 388, ll 38-42*), which was probably a fact, but which, as every Hindu would appreciate, would still be no adequate explanation whatever for keeping her back.

It is no doubt claimed that Birendra Chandra Banerjee was a "near kinsman", but on his own evidence the claim is no more than a pretence—he was a kinsman only in the way that one touch of nature would make the whole world kin. His father's elder brother, as he says, had married a sister of Akshoy Roy, the latter being an agnatic uncle of the Kumars (*Vol 15, p 314, ll 34-36*). According to Jyotirmoyee Devi, P W 660, Akshoy Roy was her father's kinsman and her "distant uncle" (*Vol 8, p 289, ll 27-28*). Akshoy Roy's younger brother Shyamapada Roy's widow Ananta Kumari Devi

has been examined on behalf of the plaintiff, and she also says that the Kumars' father Raja Rajendra Narayan Roy was Akshoy Roy's and her husband's agnatic cousin (*Vol 1, p 464, ll 29-30*) But even supposing that instead of being a distant agnate, Akshoy Roy was Raja Rajendra Narayan Roy's own brother, Birendra Chandra Banerjee would still not be a kinsman or *blumna-gotra sapinda* Birendra's father's brother having married Akshoy Roy's sister, their son might be such a *sapinda* or cognatic relation, but how this fact would establish a blood relationship, near or remote, with Birendra's father or with Birendra is more than any known rules or principles of Hindu Law can account for Birendra himself stated in his Sripur deposition that *asaucha* (or mourning on account of death) in the Kumar's family created *asaucha* of Akshoy Roy for 11 days, not that it similarly affected Akshoy's sister's family (*Vol III, p 5, ll 14-16*)

It is not surprising that the Chota Rani Ananda Kumari Devi, D W 89, should say "I do not know whether Birendra Banerjee was related to the Raj family I have never heard of it" (*Vol 14, p 56, ll 20-21*) Satyendra describes him as "a relation and employee of the Kumar" (*Vol 16, p 430, ll 34-35*) the "relation" was a myth, the "employee" alone was a fact, Birendra himself admitting that at Darjeeling he kept the account of household expenses (*Vol 15, p 376, ll 11-12*)

In my opinion Birendra Chandra Banerjee had as much right to perform the Kumar's *mukhagni* as the "*sala babu*" Satyendra Nath Banerjee might be supposed to have Birendra purported to do the act no doubt, but this was because he could be easily passed off as a kinsman The main object must have been to keep Bibhabati off the scene, though, as stated above, she should have been the person to perform this last rite to her husband

Defendants' witness Tinkari Mukherjee admitted that where there was no issue, the wife generally did the *mukhagni* (*Vol 1, p 439, l 36*) He speaks of a case where he saw the *mukhagni* of a destitute Brahmin widow done by the Brahmins who carried the body (*ibid, p 439, ll 28-32*), just as Haran Chandra Chakladar came across a case of a deceased Brahmin who had no relation in which this particular ceremony was performed by another Brahmin present at the spot (*Vol 1, p 394, ll 28-30*), but these were exceptions which only went to prove the general rule that *mukhagni* was as much the duty as the privilege of an agnatic kinsman or a person of the same *gotra*

RECITAL OF MANTRAS BIRENDRA'S IMPROVISATION OF A SECOND PRIEST

In the Sripur case Birendra was somewhat restrained in his description of the part he had played at the cremation, merely stating that he had bathed the body and applied fire to the mouth (*Vol III, p 6, ll 24-25*), but adding a detail about the uttering of *mantras*, which he could not foresee at the time would push him into rather a tight corner in the course of his present evidence It was Ambika Thakur, he stated on that occasion, who had acted as priest and made him recite the *mantra* of *mukhagni* (*ibid, p 6, ll 25-27*) Unfortunately for him, however, some of the commission witnesses of the defendants in the present suit, perhaps from a similar anxiety to embellish their evidence with details, but oblivious of the consequences which they might be thereby bringing on for Birendra, happened to introduce a different priest in the person of Sashi Bhusan Banerjee, such as Kanai Ram Mukherjee for the first time (*Vol 1, p 364, ll 33-34*), and R N Banerjee after him

(Vol 3, p 109, l 3),—Shyamadas Banerjee anticipating them only to a guarded extent (Vol 1, p 261, ll 4-5), but a later witness, D W 101, Satya Prosad Ghosal going very much beyond, stating in fact that he did not remember any other man besides Sashi Bhushan Banerjee having uttered the *mantras* (Vol 14, p 298, ll 1-2 and 24-26)

Faced with this sudden conflict in the evidence, Birendra of course at once rose to the occasion, and put up a brave effort to reconcile the discrepancy by "just remembering" that with Ambika Thakur there had been "another man" (Vol 15, p 357, ll 17-19 and 25-26) Birendra admits he had read his Sripur deposition before coming to depose in this case, but not before he had given his statement to the defendants' lawyers (*ibid*, p 338, l 34—p 339, l 7) this particular passage, however, had not "excited" his attention at the time (*ibid*, p 357, ll 22-24) One has only to read the story he concocted then and there that Ambika Thakur had been reciting the *mantras*, while the other man stood by to correct his "lapses", to see how a lying witness gets entangled in his own meshes (*ibid*, p 358, ll 12-29)

DR ASHUTOSH DAS GUPTA

It is no wonder that Birendra got his worthy compeer Dr Ashutosh Das Gupta, D W 365, to back him up "Who was the *purohit* (priest)?"—Dr Das Gupta was asked in examination-in-chief, and he said without hesitation "A cook called Ambika and a *bhadralog* (gentleman) of Darjeeling who uttered *mantras* with the cook at the same time as he" (Vol 16, p 244, ll 12-14), his memory, if anything, becoming more distinct in cross-examination, as he remembered that the *bhadralog* of Darjeeling was a Bengalee (*ibid*, p 288, ll 24-27) Quite characteristically he was not at all deterred by the fact that he had made a different statement in the Defamation case

"There was a priest He was a Hindu I cannot give his name I saw him at Darjeeling before second Kumar's death I cannot say whether the priest went to the place of cremation before or after us (Says after) He went with us I do not remember where I saw the priest before I saw him for the first time at our house at Darjeeling on the day of the second Kumar's death I cannot say if the priest was an up-countryman or a Bengalee" (Ex 395 (1), Vol II, p 361, ll 15-22)

"I cannot say what the priest did at the place of cremation" (*ibid*, l 25)

This was put to him, but he said with the utmost unconcern that he had stated what he then believed to be true (Vol 16, p 288, l 31)

SATYENDRA'S FAILURE OF "DEFINITE RECOLLECTION"

Satyendra, who came to depose still later, was, however, more cautious With every desire to support his brother-in-law's "near kinsman", he could not yet muster up courage enough to go the same length as he, but avoided a pitfall by failing to have "a definite recollection of the man who officiated as the priest", though he remembered "the act of the *mantras* being chanted", and remembered also that it was "some local gentleman" who chanted them, and as if to prove his defective recollection, he first said that the *mantras*

were uttered after the body had been placed on the pyre and not before, and then added "*Mantras* were chanted before that also, I think I remember this" (*Vol 16, p 539, ll 22-33*)

RECITENCE OF EARLIER COMMISSION WITNESSES ABOUT *MANTRAS*

It is to be observed that the earlier commission witnesses were studiously silent about the reciting of the *mantras*. Shyamadas Banerjee would have no "priest" at first, but when 'in a moment of weakness he happened to introduce one, the utmost length he could go was to make Sashi Banerjee "perhaps" act as a priest (*Vol 1, p 261, ll 4-5*) still, however, he would have none of the *mantras*. Jagat Mohini was apparently too tired with her sacred thread and her Ganges water either to observe a priest or to hear any *mantras* uttered. Rajendra Nath Sett probably had his whole attention divided between the two additional tins of ghee which had to be indented to avoid the use of kerosene oil (*Vol 1, p 302, ll 26-27*) and the "Gangaputra" (or Dome) who cast felonious eyes on the Kumar's shawl (*ibid, p 302, ll 4-6 and p 309, ll 13-16*), which last he apparently felt bound to observe, because Kshetra Nath Mukherjee (Swami Oankarananda) had mentioned it in his Darjeeling statement (*Vol II, p 227, ll 17-22*). Bijoy Krishna Mukherjee also duly remembered the shawl incident (*Vol 1, p 320, ll 1-5*), but his recollection evidently got somewhat confused, connecting it with one "Balai Babu" and making this person "perhaps" the carrier of Ganges water and *tulsi* leaves as well (*ibid, p 320, ll 27-29*) rightly enough, however, his memory was a perfect blank about the *mantras*. Mohendra Nath Banerjee just remembered enough to mention "Sashi Babu", a man whom he respected, as among those present, but nothing about the *mantras* which this gentleman is supposed to have uttered (*Vol 1, p 340, ll 32-33*), though he could vividly recall the picture of the dead body raised into a sitting posture, as it was rubbed with ghee, bathed and dressed in a new cloth (*ibid, p 340, ll 9-10 and 17-20*). Kalipada Maitra was evidently too much engrossed with the thought of doing the Kumar the honour of "*antarjali*", the same he had rendered to his mother-in-law, to give his attention to the supposed recital of *mantras* (*Vol 1, p 349, ll 18-20*)

FIRST MENTION BY KANAI RAM MUKHERJEE

It was Kanai Ram Mukherjee, the next witness examined on commission, who for the first time lapsed into a mention of *mantras*, following it up readily with the plausible story that they had been recited by "Sashi Bhusan Banerjee attached to the Deputy Commissioner's office of Darjeeling" (*Vol 1, p 364, ll 33-34*). Having said so much, the elaboration which followed in cross-examination was perhaps inevitable. "How many times", he was asked, "were the *mantras* uttered?" "I suppose three times", said he, unconsciously supplying in the same breath the key to such a wonderful feat of memory by adding, "*as is the rule*", and going on to explain "once at the time of bathing it (the body), once at the time of offering *pindas*, and once at the time of *mukhagni* on placing it on the pyre and moving round it in a circle, as is the case with the Brahmins. I exactly remember all these happened" (*ibid, p 369, ll 17-22*)

After this, as was to be expected, there were several other witnesses to take up the story of *mantras*,—not, however, those who followed immediately

after, Haran Chandra Chakladar, Nalindra Nath Ghose and Kshetra Mohan Bhattacharjī, these three having had in fact nothing to say about it, though none of them missed the bathing or the *mukhagnī*, or forgot to have seen the face, and the last-named even remembered to have changed the position of the head on the 'burning pyre to bring it on to the "fire-centre" (Vol 1, p 423, ll 6-8 and p 429, ll 33-35)

Tinkari Mukherjee who came next gave the first support, expressly mentioning the recital of *mantras* (Vol 1, p 435, l 38), but he would not commit himself as to who did it, or how many times it was done the man who was "made to utter" the *mantras* was "probably a Brahmin of that place, might be a clerk" (*ibid.*, p 436, ll 6-10), and all that he remembered was that this Brahmin did it at least once before the *mukhagnī* when the *pindās* were offered (*ibid.*, p 457, ll 25-29) The witness was candid enough to say that it was a custom for the person who did the *mukhagnī* to recite the *mantras* (*ibid.*, p 436, ll 1-2)

Anthony Morel, the next cremation witness, was similarly able to remember only the fact of the uttering of *mantras* by a Brahmin, which he says took place only a little while before the dead body was placed on the pyre, but he could not give the name of the Brahmin, nor say if he had seen him anywhere before (Vol 2, p 421, l 32—p 422, l 6)

R N Banerjee, giving evidence later, went a little further, speaking not merely of "the chanting of certain *mantras*", but of their being chanted by "Sashi Babu" before "the pyre was set fire to by a young man of the staff belonging to the Kumar" (Vol 3, p 109, ll 3-4)

Satya Prosad Ghosal, D W 101, who came long after, happened, however, to retain only too vivid a recollection of the scenes at the *sasan* he is the man who, it will be remembered, was made by Rai Bahadur Hari Mohan Chandra to share with Sashi Bhusan Banerjee the responsibility for a joint affidavit of cremation (*Ex Z (202)*, Vol 1, p 183), but about whose presence at the cremation none of the defendants' previous witnesses appear to have given any indication Satya Prosad Ghosal gave a full recital of the rites, remembering in his examination-in-chief that the man who did the *mukhagnī* went round the *chita* seven times, and that as he did so, Sashi Bhusan Banerjee got him to repeat the *mantras* (Vol 14, p 289, ll 6-18) His recollection only improved in cross-examination, bringing it back to his mind that *mantras* were also uttered when the body was bathed and when offerings of *pinda* were made after laying the body on the *chita* (*ibid.*, p 297, l 35—p 298, l 22) Sashi Bhusan Banerjee, he remembered, was the only person who read out the *mantras* (*ibid.*, p 298, ll 24-26)

Nanda Lal Gargari, D W 112, the next cremation witness, spoke of the smearing of the body with ghee and of the pouring of water over it, but as regards *mantras*, said only in an off-hand manner that some such thing had been done (Vol 14, p 354, ll 27-29)

GRADUAL EVOLUTION OF THE STORY OF MANTRAS

One has only to study the process of evolution of this story of *mantras* to be convinced that it is no more than an utter myth, like the performance of the other cremation rites Complete reticence to begin with, in view no doubt of Birendra Chandra Banerjee's and Dr Ashutosh Das Gupta's previous depositions,—then an unguarded reference to *mantras* and casual mention of Sashi Bhusan Banerjee as the priest who uttered them, with inevitable

details following, down to the number of times they were uttered,—first reaction, a natural hesitation to carry on the story,—dropped for a while in consequence, but continued then through later witnesses,—with careful avoidance of uniform elaboration to produce an appearance of genuine recollection,—Sashi Bhusan Banerjee, however, maintained all the time as the sole priest if not expressly named, not displaced by any other,—significant omission of reference to a priest in Birendra's examination-in-chief,—but ready improvisation of joint priests in cross-examination, when surprised by his Ambika Thakur of Sripur fame,—supported only by Dr Das Gupta, Satyendra merely trying to avoid the difficulty, but none too cleverly

I have said enough to show why I find myself wholly unable to accept the defendants' case as to the performance of full Hindu rites at the morning cremation. One or two further illustrations may perhaps be given to prove the utter worthlessness of the evidence given by their witnesses

OTHER CREMATION RITES

Rubbing of ghee and bathing of the body are an important part of the ceremonial at a Hindu cremation, and quite naturally, none of the witnesses could, therefore, afford to forget it. Each, however, tried to embroider his story with such details as he could think of. Thus, Mohendra Nath Banerjee made the dead body "sit" during these operations (*Vol 1, p 340, ll 9-10 and 19-20*), while Tinkari Mukherjee placed it in a slanting position first, when the coat was taken off, a new sacred thread put on and ghee rubbed over, and then made it "sit on the ground" (*Vol 1, p 457, ll 30-33*). Satya Prosad Ghosal, with his wonderful memory for details, gave a more graphic picture. He first said that some people carried the corpse in a "slanting manner" and put it down on the grass, but the body held above the grass, the legs only touching the ground! The shirt was then taken off, and the body anointed with ghee (*Vol 14, p 297, ll 27-30*). Nanda Lal Gargari made the Kumar sit on a *toshak* (mattress) and not on bare ground,—in the same posture as his dead father had been seated, the seat touching the *toshak* and the body supported in that position by somebody holding the back the body being heavy, also like that of his father, it could not be "held off the ground" (*Vol 14, p 357, ll 8-14*). Then came Birendra Chandra Banerjee, with his smiles, to "non-seat" the body completely

"Q —Mohendra Babu has deposed that the Kumar was smeared, with ghee seated. Is that true?

A —(*Witness smiles*) Is that possible? Could a dead body be seated? Seeing he had died at night—the body had become stiff" (*Vol 15, p 359, ll 1-5*)

FREE PLAY OF IMAGINATION

In my opinion, these are not minor discrepancies such as one might expect to find in truthful evidence, nor are they any guarantee against previous tutoring, for no tutoring can check the voluntary flow of such realistic details, particularly with a certain type of witnesses. They seem, on the other hand, only to betoken the free play of imagination on a topic which gave abundant scope for it, being based on imagination itself

In their anxiety to leave nothing undone in the way of rites and ceremonies, the defendants' witnesses tried their best to avoid the least appearance of a hurried cremation. According to them, without holding them rigidly at all to their timings, the procession started from "Step Aside" at about 9 in the morning, and the funeral started at about 11. Shyamadas Banerjee in fact says they arrived at the *sasan* at about 10, and the buffalo-ghee was sent for at 11-30 or 12 o'clock (*Vol 1, p 260, l 42—p 261, l 1*), and Kanai Ram Mukherjee gives the hour of arrival as about 10 or half past 10 (*Vol 1, p 364, ll 37-38*). As regards the time taken to complete the burning of the body, Kanai Ram Mukherjee puts it down between 4 and 4½ hours (*ibid, p 371, ll 17-19*), after which there followed the washing of the pyre, which itself must have taken a fairly long time, Shyamadas Banerjee saying that at least 10 or 15 pitchers of water had to be brought from the *ghora* for the purpose, and it took 3 to 5 minutes to fill up one pitcher (*Vol 1, p 259, ll 23-26*). Quite consistently, therefore, the witnesses fixed the time of return after 4 or 4-30 P M, Kalipada Maitra putting the hour of leaving the cremation ground at about 5 P M (*Vol 1, p 349, ll 39-40*).

SATYENDRA'S LYING QUIBBLING ABOUT HOUR OF RETURN FROM CREMATION

In his examination-in-chief, Satyendra also fell in with this evidence, stating quite explicitly "We returned from the cremation ground in the evening" (*Vol 16, p 430, l 36*), and admitting this in cross-examination (*ibid, p 502, ll 21-22*). His diary, however, proved a veritable bomb-shell, in which he could not deny (*ibid, p 502, l 32*) he had made the entry in no ambiguous language "Returned at about 2 p m"! (*Ex 399 (2), Vol 1, p 307, ll 7-8*).

Sitting down to write the diary only a few days after the event, without of course any prophetic realisation at the time of the importance which the question of rites might afterwards assume, it seems to me inconceivable that the man was here making a deliberately fictitious entry as regards the hour of his return from the cremation ground. I have no doubt in my mind that that was the correct hour, and the evidence which has now been given in court advancing the time to evening or afternoon is nothing but manufactured evidence.

There could be no stronger condemnation of this witness than the lying quibbling he indulges in with reference to this entry in his diary

"Q—If somebody says you returned at 2 P M ?

A—That would not be quite correct

Q—You mean quarter past 2?

A—May be 3 or 4 P M

3 o'clock I would not call evening but afternoon. Between 3 and 4 P M I would call afternoon today. I do not say I could call it evening when I wrote my diary at Jaidebpur—at that time my knowledge of English was not as good as now."

(*Vol 16, p 502, ll 23-30*)

But it was not at Jaidebpur, but in court that he had used the word "evening" in his diary he had mentioned the specific hour of 2 P M

His next attempt was to quicken his steps on the return journey from the *sasan* he would have the court believe that he accomplished it in half an hour or 40 minutes' time! (*ibid*, p 539, ll 1-2) As he admitted, it was walking uphill throughout up to the chowrasta. He forgot that one of the defence witnesses Kanai Ram Mukherjee had said that it took about 1½ or 2 hours for the procession to reach the cremation ground from where he had met it, namely, "20 or 25 cubits" away from "Step Aside" (*Vol I*, p 368, ll 5-8), and that he took about 1½ hour or so in returning to the Cutchery Building from the cremation ground (*ibid*, p 371, ll 31-33)

To keep as near to his diary as possible, Satyendra ultimately wanted to say that the cremation was over at about 2 P.M. (*Vol 10*, p 539, l 9), but if he returned to "Step Aside" at 2 P.M., it must have been completed by 1 o'clock, which, however, would imply that some extraordinary means must have been adopted to get the body burnt up so quickly. This, of course, he could not admit, and protested, on the other hand "I do not say the cremation was over at 1 o'clock" (*ibid*, p 539, ll 17-19)

A HURRIED CREMATION

It will not do to say, as Mr Chaudhuri now suggests, that Satyendra left the *sasan* directly on completion of the actual cremation, for his own evidence is that he "stayed at the *sasan* right through" (*ibid*, p 502, l 22). In any view of the matter, it seems to me to be wholly impossible to explain away the entry in his diary, which stands in fact staving him as well the other defence witnesses wholly out of countenance. It was a hurried cremation, sure enough, with no useless rites to delay the operations, but, on the other hand, with a plentiful supply of buffalo-ghee, if not of kerosene oil, to feed the fire for an expeditious ending.

"SHAWL" INCIDENT

One important reason for introducing the rites was doubtless to lay the body bare at the *sasan* for everyone to see, but apart from this, the defence witnesses took particular care to stress the fact that they had seen the face uncovered there. This, however, was all false evidence. Not to mention anything else, the very shawl incident to which several of the witnesses refer, is enough to destroy the case that the body was cremated without any covering on the face. There could have been no discussion as to whether the body should be burnt up with the shawl or not, as deposed to by Rajendra Nath Sett among others (*Vol I*, p 302, ll 4-6 and p 309, ll 15-16), if it had not been placed on the funeral pyre with the shawl on. It will be remembered that Swami Oankarananda in his statement to N. K. Roy had mentioned the specific incident of Nathu Dome attempting to take away the shawl from the top of the dead body (*Vol II*, p 227, and *Vol 8*, p 100, ll 4-7), and this is probably the reason why the defendants' witnesses were made to refer to it as well,—an unwilling tribute to truth and to the truth of the plaintiff's story, though perhaps without a full realisation of the disastrous effect it had on the case of the defendants.

Among other witnesses besides Rajendra Nath Sett who speak about this particular matter may be mentioned Bijoy Krishna Mukherjee, who says quite clearly that the body was placed upon the pyre after which the ceremony of putting fire to the mouth was done, and "then there was discussion

if the cloth covering the body was to be burnt or given to the Dome" (Vol 1, p 319, l 42—p 320, l 3)

As I have said before, I refuse to believe that the face was exposed at the *sasan*, any more than it was at "Step Aside", merely because the defendants' witnesses all join in saying that they saw it. For one thing, even if it was, this would not be such a striking fact as would inevitably imprint itself on the memory of every one present at the cremation without exception. The very positiveness with which the witnesses make their statements seems to me to condemn their evidence.

HARAN CHANDRA CHAKLADAR

It is not necessary to deal with all such witnesses, but I might perhaps touch on the evidence of one of them, Professor Haran Chandra Chakladar (Vol 1, pp 376-400), to whom and to whose introduction into the witness box I have had occasion already to refer at some length in connection with the Lindsay enquiry, he being a witness on whom Mr Chaudhuri probably relies as strongly as did Mr Lindsay, who thought in fact that "he was the sort of person whose evidence would be believed throughout Bengal whatever he said" (Vol 2, p 140, ll 20-21)—though one does not know on whose testimony Lindsay had come to form this extraordinary estimate (*ibid*, p 149, ll 16-19)—not apparently through Satyendra, if one is to believe him, for he stoutly disavowed any acquaintance with this University Lecturer, having in fact never even heard of his name before he happened to go along to his house with Lindsay to record his statement (Vol 16, p. 540, ll 13-14 and ll 19-21).

By his evidence, the witness gives the fullest support to the defendants' case regarding the morning cremation. He was one of the Brahmins who went over from the Sanitarium (Vol 1, p 376, ll 27-32), and helped to carry the dead body (*ibid*, p 377, l 34). He speaks of "the utmost publicity" with which the procession was taken along, scattering rice on the way as it proceeded (*ibid*, p 377, ll 8-9 and l 26), and speaks also of the bathing of the body and the *mukhagn* at the *sasan* (*ibid*, p 377, ll 37-39). He saw the dead body before it was taken to the cremation ground, saw it again after it was taken there, both at the time of bathing and at the time of *mukhagn*, recognising it to be that of the second Kumar of Bhowal (*ibid*, p 378, ll 1-10). He was present at the condolence meeting at the Sanitarium, which he says was largely attended and at which he himself spoke (*ibid*, p 378, ll 15-16 and ll 20-22).

PRESENT EVIDENCE AND PREVIOUS STATEMENT TO LINDSAY COMPARED

If Lindsay's record of his interview with him (*Ex Z(359)*, Vol II, p 268) can be accepted as correct,—and the defendants do not suggest it is not,—Chakladar's present evidence is indeed a remarkable improvement upon the statement he then gave, for, according to Lindsay, "Professor Chakladar went to the house and saw the body lying under a sheet", and "saw the Kumar's face when the fire was applied to the dead body", the plain meaning of which, as it seems to me, is and can only be that he saw the face for the first time at the *sasan* at the time of *mukhagn*.

With a subtlety worthy of a medieval school-man, this erudite post-graduate lecturer on Ancient Indian History and Anthropology (*Vol 1, p 379, l 23*) was, however, very keen to make out in cross-examination that though he said he had seen the face when the body was on the pyre, he did not say that he had seen it then "only" (*ibid, p 395, ll 11-12 and l 28*) He could not help admitting all the same that when he saw the dead body at the house, being brought out "from within", as he said, it was at the time "in lying condition, covered with a piece of cloth",—"covered with a *chadar*", as he repeated (*ibid, p 393, ll 6-7, 10-11 and l 29*)

I do not believe that he had seen the face anywhere. He would certainly not see it on the pyre, if the body was laid on, face downwards. That is probably why he was anxious to create for himself now an additional opportunity of having seen the face, namely, at the time the body was bathed, and he went the length of suggesting that "most probably" he had "stated about bathing before Mr Lindsay"! (*ibid, p 395, ll 7-8*) It is curious, however, that though his recollection was clear about having seen the face during the alleged bathing, it should have wholly failed him as to who had done the bathing (*ibid, p 394, ll 31-32*), or whether it had been done "in a lying or a sitting posture" (*ibid, p 395, l 4*)

I need hardly repeat what I have pointed out before that according to the witness bathing as well as *mukhagni* was an inevitable feature of every cremation he had attended, and in giving a description of the second Kumar's cremation, it is not at all surprising, therefore, that he should mention bathing as part of the rites, whether in fact he had been there to see it or not.

The witness admits having got a copy of his statement to Lindsay from a nephew of his, an Alipore pleader, before he came to give his deposition in this case (*ibid, p 392, ll 25-29*), but in re-examination he invented the ridiculous fiction, which is really not evidence at all, that his nephew told him that somebody on behalf of the plaintiff had given it to him to show it to the witness (*ibid, p 398, ll 19-25*), the nephew who was said to be residing with him in his house (*ibid, p 399, ll 5-6*) not having been examined.

AMAZING LACK OF STRAIGHTFORWARDNESS

Haran Chandra Chakladar is a witness who, for a man ostensibly holding a responsible position, showed from the beginning an amazing lack of straightforwardness which seems to me to make the whole of his evidence suspect. According to Lindsay's record of his interview with him, Chakladar "did not wish to be called in court so he had not given a written statement before" (*Vol II, p 266, ll 13-14*), which suggests, first, that Lindsay had sent him a questionnaire, but he would not reply, and secondly, that on Lindsay enquiring about the reason, he averred his disinclination to come to court. Lindsay surmised that as "an old man and a scholar" he did not like to be "bothered with these things" (*Vol 2, p 155, ll 12-14*), though one does not know how, a scholar as he might have been, he was an "old man" at 46! Chakladar in his evidence, however, totally denied that he had been asked for any statement before his interview with Lindsay (*Vol 1, p 395, ll 29-33*). He sought to convey the idea that he merely refused to make a "formal statement" before him (*ibid, p 380, ll 3-6*), understanding by "formal statement" that Lindsay would put him questions, and he would

have to reply to them one after another, and then sign the document (*ibid*, p 380, ll 20-23) All the same, he was not in a position to deny that he might have told Lindsay that he was "all along against giving deposition in court", because forsooth he was "afraid of coming to court"! (*ibid*, p 384, ll 11-13)

This timidity to face the court seems, however, to have somehow vanished, when he had to find an excuse for his unwillingness to make the "formal statement" he must then of course have said to Lindsay that if he had to make such statement, he would, if necessary, make it in court! (*ibid*, p 380, ll 8-9 and p 384, ll 13-14)

PRETENCE OF *BONA-FIDES*

The witness tried no doubt to keep up the pretence of *bona fides* as long as he could, but had very soon to give himself away, when pressed for the reason why he would not give a signed statement to Lindsay at the personal interview "What objection can you have to that?" (*ibid*, p 380, l 24) Out came the truth in an unguarded moment "I did not like then to be bound down by that statement"! (*ibid*, p 380, l 25) A lot of explanations followed after this, some "golmal" (trouble) might arise in future the matter might get publicity the other side might "use force" on him in future and "oppress" him! (*ibid*, p 380, ll 27-31) One wonders if to save himself from such "oppression" he was keeping himself free to make any statement whatever in future as he might find it to his interest to make!

Mr Chaudhuri solemnly invited the court to accept this as a serious explanation, and actually called attention to the Mirzapur riot which took place on the 10th June, 1921 (*Vol 18*, p 113, ll 43-44), and to the murder of Mukunda Guin which followed on the 24th September of that year—after Chakladar's statement, be it noted—(*ibid*, p 116, ll 30-33), as if these occurrences had deterred a single other witness from making a statement, and as if the making of a "formal" statement would make all the difference!

Chakladar was doubtless at Darjeeling at the material time, staying at the Sanitarium, as stated by Professor S N Maitra and other witnesses of the Maitra group, and this was perhaps his only connection with the supposed cremation of the second Kumar of Bhowal on the morning of the 9th May!

EXTRAORDINARY INTEREST IN SECOND KUMAR AT DARJEELING

Chakladar's story of being called from the Sanitarium in the morning (*Vol 1*, p 376, ll 27-32)—how a man from the Kumar's house came to one Nibaran Mukherjee to give him the news of death, and how this "Nibaran Babu", who was a fellow boarder of Chakladar occupying the next room to his at the Sanitarium, informed him in turn and took him along as a Brahmin to help in the cremation—agrees with nobody's version, and is in fact contradictory to the defendants' own case that a messenger came only once to the Sanitarium, and his further statement that he and his companion stopped on the way at the Cutchery Building to give information to the Secretariat clerks (*ibid*, p 386, ll 21-22) is equally a departure from their other evidence, being perhaps a confused effort to keep in line with the version of Rajendra Nath Sett

There was probably one Nibaran Mukherjee at the Sanitarium at the time, as is spoken to by Professor Maitra (*Vol 8*, p 12, ll 27-28), but whether he was the "Nibaran Babu" of Chakladar is not at all clear, this person

being admittedly dead,—a fact which the learned judge notes (*Vol 18, p 392, l 1*), but only to excite Mr Chaudhuri's anger as conveying an unworthy suggestion against the witness. With due emphasis counsel pointed out that Chakladar himself stated that he did not know whether Nibaran Babu was dead or alive (*Vol 1, p 376, ll 33-34*), but it is rather significant the witness vouchsafed the information in his examination-in-chief. The fact remains that none of the defendants' commission witnesses mention either Chakladar or his "Nibaran Babu" as among those whom they saw at "Step Aside" or at the *sasan*. Neither does Chakladar appear to have mentioned Nibaran Babu to Lindsay, though according to Mr Chaudhuri, questionnaire or no questionnaire, every witness must have been asked if there were other persons present either at the time of death or in the procession or at the cremation. Chakladar, of course, never met this Nibaran Babu ever afterwards—he merely knew that he lived in the district of Dacca, and did not remember the name of the village (*ibid, p 376, l 35—p 377, l 1*). He had picked up his acquaintance only at Darjeeling (*ibid, p 388, ll 16-17*).

Nibaran Babu must apparently have felt greatly interested in the second Kumar at Darjeeling, and infected his new friend with some of his interest as well,—though this is a fact not deposed to by Satyendra or any of the other members of the Kumar's *entourage*. For, it is from Nibaran Babu that Chakladar is supposed to have heard, and "heard repeatedly" about the Kumar's illness even "5 or 7 days" before the latter's death (*ibid, p 389, ll 10-12, 19-28 and 28-29*) and not only this, but he heard that the illness was "pain in the abdomen"—"colic" (*ibid, p 389, l 31 and p 390, l 13*) "this much" he remembered, however, that the condition of the Kumar "was not very serious" (*ibid, p 390, ll 10-11*). In point of fact he and Nibaran Babu felt impelled to go to see the Kumar one day (*ibid, p 389, l 34*). They met him sitting "in the outer parlour", but though there was no question of "coming to court", a strange shyness still seems to have overcome this timid man, and during the half-hour he was there, he no talk with the Kumar! (*ibid, p 390, ll 15-16, 21-22 and 29-30*). Sure enough, however, he saw him,—“probably” “for the first time” “in that very place” (*ibid, p 391, l 4*), for, unless he did so, how could he, even with his academic vision, recognise the face afterwards on the pyre, if not on the *khatia* and during the bathing?

Chakladar's interest in the Kumar did not end with the latter's death, for, he duly attended the condolence meeting at the Sanitarium, and also "spoke something" (*ibid, p 378, ll 15-21*), but curiously enough,—even if his name might have been left out in the "list of persons present" (*Ex Z(118), Vol I, pp 462-463*),—it was not to be found in the record of the proceedings of the meeting which happened to give the name of all the speakers (*Ex Z(115), ibid, pp 451-454*).

I am not at all surprised that the learned judge refused to believe this witness, and so do I without the slightest hesitation.

PRETENDED DETACHMENT OF DEFENCE WITNESSES FROM SATYENDRA

It is necessary only to emphasize a point I have dealt with at some length earlier in my judgment—the ignorance which the witness and Satyendra pretended of each other. This detachment from Satyendra is in fact a remarkable feature of the evidence given by the defendants' witnesses,

and it is both interesting and instructive to cull together a few of the references

Jagat Mohini —

"Q —Do you know the brother-in-law of the Kumar ?

A —I went there only for a day I did not know such things as to who was the brother-in-law or who was a relation I have no acquaintance with the Kumar's brother-in-law I am not even aware as to who the brother-in-law is" (*Vol 1, p 288, ll 9-13*)

"I have not heard the name of Satyendra Banerjee" (*ibid, p 289, ll 33-34*)

Kalpāda Maṭra. —

"I had no acquaintance with Satyendra Nath Banerjee, but I saw him at the time of burning the dead body in the cremation ground Regarding this matter up to this time I had no talk either with Satyen Babu or with Rai Bahadur or with Pankaj Babu" (*Vol 1, p 355, ll 7-10*)

Haran Chandra Chakladar —

"Q —Did you ever meet with Satyendra Babu in your life except on these two occasions, that is, on the occasion of Kumar's death and in company with Mr Lindsay?

A —No, I did not meet him any more" (*Vol 1, p 379, ll 12-15*)

"I did not think at that time that Satya Babu was interested in any way in that enquiry (Volunteers) I came to understand afterwards that as the Kumar's wife admitted Kumar's death to be true, Satya Babu was also on that side" (*ibid, p 381, ll 33-36*)

"I do not know whether Satya Babu used to stay at Kumar's wife's house I had no talk with Satya Babu on any other day except on the day of the Kumar's death On the day Mr Lindsay came, he came and informed me I had no conversation with him The day on which Mr Lindsay came, Satyendra Babu did not introduce himself I recognised him at the very sight" (*ibid, p 385, ll 28-31*)

Nalindra Nath Ghose —

"I do not know Satyendra Banerjee I cannot tell the name or the particulars of one of his men who one day made the Kumar of Bhowal known to me I do not know him even It was he who said that he was the Secretary to the Kumar or some such thing" (*Vol 1, p 419, ll 15-18*)

R N Banerjee —

"I do not remember the name of Satyendra Nath Banerjee, and I cannot connect anybody whom I know" (*Vol 3, p 113, ll 2-3*)

"I do not know the sala of the Kumar I have never seen him probably" (*ibid, p 114, ll 12-13*)

Narendra Nath Mukherjee, D W 66 —

"I do not know Rai Bahadur Satyendra Banerjee I never saw him. I see his name now in the papers" (*Vol 13, p 193, ll 24-25*)

Surendra Mohan Chanda, D W 69 —

"I did not hear the name of Satyendra Babu, Kumar's brother-in-law, or see him

To Court I saw the name in the papers I saw it 12 years after the second Kumar's death" (Vol 13, p 222, ll 14-17)

Satya Prosad Ghosal, D W 101 —

"I never heard the name Satya Banerjee

Q—Satyendra Nath Banerjee, Rai Bahadur?

A—I heard the name not then, but after the arrival of the sannyasi I heard that he was the brother of the Rani and was at Darjeeling then" (Vol 14, p 297, ll 8-11)

Srish Chandra Roy, D W 103 —

"I did not know Mr S N Banerjee or Rai Bahadur Satyendra Banerjee then I know him now I mean I have read of him in the papers, I don't know him" (Vol 14, p 315, ll 26-28)

Nanda Gopal Gargari, D W 112 —

"I understood that the Rani was there, but did not hear of her brother No body was pointed out to me that day as the Kumar's sala I did not know even now whether the Kumar's sala was there" (Vol 14, p 362, ll 6-8)

Panchanan Mahtia, D W 113 —

"I do not know Satyendra Banerjee Nor if he ever read at Bah I saw his name only in papers—did not otherwise hear it This was 1½ or 2 years ago when the suit began I read in the papers that a sannyasi calling himself the Kumar was prosecuting the case I read Satyen Banerjee's name in that connection

To Court I never saw Satyendra Banerjee I do not know that he has any connection with this case I saw his name in the papers once again I probably saw that the defendant (Bibhabati) is related to him" (Vol 14, p 366, ll 3-14)

All these protestations are to my mind nothing but an elaborate make-believe, and one wonders if the witnesses themselves expected that they could thereby deceive anybody as to the true character of their evidence, which is that of partisan witnesses from beginning to end

FINAL CONCLUSION ON MORNING CREMATION

I believe I have discussed the evidence of the morning cremation at sufficient length, giving the fullest consideration to Mr Chaudhuri's arguments on all material points, and I have no hesitation in recording my entire concurrence with the trial judge's conclusion that the body which was taken out for cremation and cremated on this occasion was not that of the second Kumar of Bhowal

It is perhaps necessary to add that in arriving at this result, I have not paid the slightest regard to the question of identity or to the learned judge's findings thereon, but have proceeded solely and wholly on the evidence touching the cremation itself and the proceedings connected therewith The

plaintiff may not have been able to give *direct* evidence regarding the substitution of another body,—in my opinion, as I have explained before, he was not called upon to do so, whatever his legal advisers may have thought in the commission stage of the suit when they put the Penguchia story to Lindsay in cross-examination (*Vol 2, p 178, ll 29-32*),—but there can be no doubt whatever that the defendants have signally failed to substantiate the case which they set out to make, namely, that it was the Kumar's body which had been actually burnt in the morning cremation

To show that the Kumar's body escaped cremation on the night of the 8th May, and that the body cremated on the day following was not the Kumar's, will not, however, carry the plaintiff the whole of the way he has to travel before he can establish his case. He will have yet to prove that the body which was missed from the cremation ground on the 8th night was alive and this takes us to the next topic, that of Rescue

7 ALLEGED RESCUE BY SANNYASIS

The story of rescue is quite an important chapter in the plaintiff's case, and the evidence of it comes mainly from one of the rescuing sadhus, Baba Darsan Das Naga, *P W 991 (Vol 11, pp 378-422)*, or Darsan Das, to give him the shorter name by which he has been referred to in these proceedings, confirming the plaintiff in respect of such particulars as the latter could be expected to give (*P W 10, Vol 4, pp 94-181*)

The witness not only describes the actual rescue, but narrates the plaintiff's history from then onwards to the moment of his appearance at Buckland Bund in Dacca, and if his evidence can be accepted, there can be no doubt that this will by itself be almost enough to prove the plaintiff's identity as the second Kumar. The account he gives really establishes an unbroken chain of continuity from Darjeeling to Dacca, the man rescued from Darjeeling *sasan* in May, 1909, being the very man who turned up at Buckland Bund in 1921, and it corroborates in all essential particulars the account which the plaintiff has himself given of his wanderings with the sadhus since he left Darjeeling in their company. All this evidence, it is to be noticed, is practically one-sided and stands unchallenged in cross-examination

It is perhaps not a violent assumption to make that the body which is said to have been rescued by Darsan Das and his companions was the same as had been brought to the *sasan* that night and was afterwards missed by the cremation party from "Step Aside"

The learned judge in the court below, if I follow him aright, is not prepared to accept the evidence of rescue as proof of identity, but identity being otherwise established, he sees no reason why it should not be believed. "Nobody", he says, "will accept this evidence, or accept it as proof of identity, if it were not otherwise proved, but granted the identity, there would be no reason to reject it" (*Vol 18, p 394, ll 18-21*). Or, as he puts it otherwise "His (Darsan Das') account reads like a fairy-tale, and if the plaintiff needed it to establish his identity, he would fail, for it can be no more found on this testimony than it can be found upon his testimony that he is the Kumar" (*ibid, p 396, ll 22-25*)

In my opinion, the credibility of Darsan Das need not rest on prior proof of identity at all. If as the trial judge holds, the account this witness gives is "clear and consistent, and unshaken by cross-examination", (*ibid,*

p 394, ll 33-34), I see no reason why it should be supposed to possess this character only on the condition postulated by him "given the identity, otherwise proved" (*ibid*, ll 32-33)

AMAZING STORY OF RESCUE BY DARSAN DAS

It is no doubt an amazing story, almost a fantastic tale, which this witness relates, but this by itself seems to me a circumstance which, if anything, ought to tell in favour of its truthfulness, rather than against it it should in fact be regarded as too strange to be a fiction

The learned judge has himself expressed his appreciation of the witness in no uncertain terms. As he points out, the man denies that he had been to Darjeeling after the incident he was speaking of (*Vol 11, p 398, l 23*),—there being nothing on the defendants' side to show the contrary,—and he seemed also to be incapable of grasping a map (*Vol 18, p 396, ll 21-22*), and yet, to quote the words of the judge, the account he gives only "gets richer and richer in cross-examination, breaking down nowhere, not even on points of topography in so difficult a part of Darjeeling, changed out of recognition since 1912 when the new Sudhir Kumari Road was opened, all trace of the old *sasan* gone" (*ibid*, p 396, ll 17-21). Even if he had been taken to the spot and tutored by somebody, says the learned judge, he would have expected such a witness to break down. But Darsan Das did not. On the other hand "he stood cool and collected in the box and gave his account with the air of a man speaking from memory, and the memory of an illiterate man for detail" (*ibid*, p 394, ll 36-40).

Such being the opinion of the trial court itself about this witness, it seems difficult to follow why his evidence should not have an independent value of its own, apart from any reference to the question of identity. The evidence will certainly bear scrutiny on its own merits.

Unable to shake the witness directly, Mr Chaudhuri yet advanced a number of grounds before us why his story should be rejected outright as "pure invention", for on his argument there could not be any question of a mistake on the part of the witness.

The story is given in elaborate detail, so far as the actual rescue, up to the time of the sadhus departing from Darjeeling with the plaintiff, is concerned (*Vol 11, p 381, l 37—p 386, l 27*), and need not be recapitulated at length. The learned judge has set out a great part of it in his judgment in the witness' own words (*Vol 18, p 394, l 41—p 396, l 34*). There was a long cross-examination of the witness on the matter, but he stood it remarkably well (*Vol 11, p 400, l 15—p 412, l 15*).

THE STORY IN BRIEF THE DARJEELING PART

Briefly, the story is that Darsan Das and three other sadhus whose names he gives, Dharam Das, Pritam Das and Lok Das, were sitting one evening in a secluded shelter near about the old *sasan*, which was some sort of a cave formed of big boulders, just enough to hold 4 persons. Their attention was suddenly attracted by cries of "*Haribol*", "*Haribol*", these being the usual cries uttered during a Hindu funeral procession. One of them looked out, and saw a crowd of people with lanterns flashing on the *sasan*. A strong wind was blowing at the time, and the sky was also

overcast. Soon they ceased to hear the cries, and Darsan Das stepped out to see what had happened. There was no trace of the crowd. The wind had meanwhile dropped, but not the rain, and he heard a succession of weird sounds, which apparently excited his curiosity. He and Lok Das then went up to the spot from which the sounds had been proceeding, and found a man lying on a *manja* (literally, a raised platform, and meaning the *khatia*). Lok Das pushed back the top sheet which covered the body after untying it, and also took off the cloth underneath which was wrapped round the man. Then, putting his hand over the nose, he perceived signs of breathing, and cried out that the man was living. Darsan Das at once went back to fetch his other two companions. Lifting the body from the *manja*, the sadhus then carried this man in their arms to their *guha* or cave, where they took off the wet clothes and put a dry cloth and blanket round him.

"BLANKET FACTORY"

They did not, however, stop in this shelter, as there was hardly room for them here, and so they took him to a "*ghar*" or hut further down-hill, being a four-roomed hut with an out-house, which is spoken to by P.W. 994, Girija Bhusan Roy (*Vol. II, p. 433, II 35-37*) and described by him as a *karkhana* (workshop). Mr. Chaudhuri calls it a "blanket factory", but it means no more than that in one of the rooms were a few implements for the weaving of coarse blankets or *puttoos*, another room being used for the making of *kannaji* or indigenous drugs, while the other two rooms were living quarters, one for the *chaukidar* or care-taker of the place, and the other for a man named Srish Chandra Gupta, P.W. 993, who used to look after the preparation of the medicines. The out-house which stood about 20 cubits away was kept as a godown.

The sadhus came to this "*ghar*", and took shelter in the out-house after removing the lock with their *chimta* or tongs. They laid the sick man on a *khatia* which they found inside. Next morning they were challenged, apparently by the *chaukidar*, but were later visited by a Babu, meaning P.W. 994, Girija Bhusan Roy referred to above, who turned out to be more friendly, and actually gave them a blanket for their ailing companion. Meanwhile, they had got a barber to come and shave the man's head for local application of some stuff which they prepared.

HILL-MAN'S HUT

As people started coming, the sadhus did not stop at this place long, but removed to another hut further down-hill belonging to an old hill-man who lived close by with his wife. Here also they were lucky enough to find a *manja* and they carried their new friend to it, still unconscious. Two or three days later he happened to open his eyes, and uttered the words (in Bengali) "Where am I?" The sadhus, however, admonished him to keep quiet. In this way they spent 14 or 15 days in this hut, during which the man slowly recovered under their ministrations, and the whole party finally left Darjeeling by train.

Darsan Das says that during this period they neither made any enquiries nor told anybody about the man they had rescued. They were "afraid of a row and of having to give explanations", and that is why they kept the

matter a secret (*Vol 11, p 387, ll 7-16*) Neither did it occur to them at the time of rescue that the friends and relatives who had brought the man to the *sasan* for cremation would be only too glad to see him alive they on their part were glad to have got "a dead man living"—"it was a *satbastu* (lit a blessed thing) and had to be cherished tenderly" (*ibid, p 404, l 22—p 405, l 16*), as he said quite candidly, little realising that he would thereby only make himself an object of Mr Chaudhuri's sneer, as if he meant to say anything more than that it rejoiced them to think that it had been given to them to save a life which had been given up for lost

At Darjeeling, the man, after he regained his consciousness, talked very little, and that not intelligibly his speech was also "impeded", as if through some physical obstruction His behaviour there, and even for a long time after leaving Darjeeling, was like that of a man bereft of understanding—a "boba", as the witness says, not a dumb or speechless person, as the word literally means, but one with a vacant mind, a nincompoop, as it were

PLAINTIFF'S OWN ACCOUNT

It is interesting to recall here the account which the plaintiff himself gives of this period

"What happened after I became unconscious I do not know I returned to consciousness I found myself amid hills and jungles I was lying on a *khatia* That was on firm ground and the only house was a tin *chhapra* There were four sannyasis there besides myself I asked, "where am I?" The sannyasis said - "You were weak—don't talk" They said that in Hindi I could understand Hindi then I had picked it up, as in my house were durwans, syces, mahouts, who talked Hindi As the sannyasis asked me to keep quiet, I kept quiet

"I was at the same place for 15 or 16 days During the period I had no talk with the sannyasis I do not remember what happened after that I left after that I went with the four sannyasis We went on foot and also by train The next thing I remember is that I was at Benares—at Asighat, Benares" (*Vol 4, p 101, ll 27-39*)

He afterwards gave the names of the sadhus as Darsan Das, Pritam Das and Lok Das, besides Dharam Das who became his Guru (*ibid, p 174, ll 13-14*)

It is worth while to set out the cross-examination in full —

"I asked—it came out of my mouth—"Ami kothay elam" (where have I come?)

I was not conscious that the sannyasis were different from me I saw the *jata* (matted hair) and that they were naked, and the *bhasma* (ashes) on their body, but I had no consciousness of any distinction between them and me I had no consciousness as to whether I was a Bengalee, or Punjabi or English at that moment I lay on a *khatia* under a *chhapra* I had no memory of any different kind of bed or bedstead Nor if I was a *Bhadralogue* or a peasant Nor of a house-holder or *Banagi* nor of a *Yogi* or *Bhogi* Nor if my previous life was happy or miserable No consciousness at all of my past—like a baby just born I can't recall if I knew Bengali or Hindi—only the sannyasis spoke in

Hindī and I understood, and I understood they were Hindusthanis
It was as if I was born anew I did not know if I was a man
or a ghost

Q—You remembered your Bengali?

A—No

Q—You had consciousness you knew Bengali?

A—I had not

I had no consciousness of being surrounded by hills or whether
I was in a sea I could not recognise trees, nor sky, nor cloud

Q—Whether it was sky or *patal*?

A—No

I started learning things like a child This was my condition
till I reached Benares I don't remember, no consciousness, if
I got into a train Or how I went to Benares Whether by train
or on foot Nor if I went by the Darjeeling Railway The
sannyasis began to call me by what name I have no consciousness

Q—They called you like a man or a dog?

A—Don't know

They did not give me a name Can't say how they called me
I did not see any Bhutia or hillman on my way, nor could I
know him if I did I could not know cattle, such as cow, calf,
ram, goat I could not know articles of food

Q—Supposing the sannyasis gave you bread, would you distinguish
it from rice?

A—No

I forgot the meanings of words, Bengali and English I had
no consciousness at all—no knowledge (When interpreted says
"I had ordinary knowledge of things after Asighat—only I did
not know my home and people")" (*Vol 4, p 158, l 24—p 159,*
l 28)

Leaving aside for the moment the question of the plaintiff's mental
condition after the rescue, as depicted by Darsan Das and the plaintiff himself
—of "loss of memory", as it has been described, I am not at all satisfied
that Mr Chaudhuri has been able to make a successful attack on the story
of rescue itself This story, it ought to be added, has been corroborated in
some material particulars by three other witnesses who were examined next
after Darsan Das,—P W 992, Bejoy Krishna Gupta (*Vol 11, pp 424-427*),
P W 993, Srish Chandra Gupta (*ibid, pp 428-432*) and P W 994, Guriya
Bhusan Roy (*ibid, pp 433-442*), who speak about the "blanket factory" and
the incidents there

MR CHAUDHURI'S COMMENTS

Mr Chaudhuri started the theory that Darsan Das, who on his evidence
was also called Gopal Das, was got hold of some time in November, 1934,
and that corroborative evidence was manufactured after he was secured, in
order to prop him up, this being the evidence not only of the three witnesses

just mentioned, but also of others, such as Matī Lal Gangulī (on commission) (*Vol II, pp 338-347*), who, it is said, was made to introduce the story of a cave during X'mas, 1934 (*ibid, p 339, ll 24-31*) to prepare the ground for Darsan Das who had been served with summons on the 20th December, 1934, but was not put into the box till the 9th January following

All this is pure imagination Counsel sought to support it by a suggestion, equally imaginary, that the plaintiff's original case was that of a *single* rescuing sadhu, his Guru Dharam Das, but that as the latter failed him, thus eliminating the only direct evidence of the alleged rescue, the number was thereafter slyly raised to more than one in order to let in a second sadhu, if possible, for the purpose

EARLIER CASE OF A SINGLE RESCUING SADHU

In the first place, it is wholly wrong to say that Dharam Das had failed the plaintiff at all I have had occasion already fully to deal with the circumstances under which the plaintiff had him brought down to Dacca, and how he was turned away by the agents of the defendants Secondly, it is not a fact that the plaintiff had ever made the case of a single rescuing sadhu The only basis for this suggestion seems to be Lindsay's record of his interview with the plaintiff on the 29th May, 1921, when the latter is supposed to have told Lindsay "that he recovered his senses in the jungle, in the hills, in the presence of *one* sadhu who has since been his Guru" (*Ex Z (358), Vol II, p 314, ll 1-3*), but as I have also explained before at some length, it is impossible to attach any importance to Lindsay's memorandum as either a correct or a complete record Even the rumour referred to in Rani Satyabhama's letter to the Maharajahduraj of Burdwan spoke of an ascetic who had come "with his followers" and taken away the second Kumar from the *sasan* (*Ex Z (33), Vol II, p 175, ll 30-31*) The defendants cannot point to any evidence that it was given out at Jaidebpur at any stage after the plaintiff's advent that the rescue had been effected by only one sadhu That was never the plaintiff's story, though, significantly enough, this was imputed to him in the official "story of the sadhu" (*Ex 443, Vol II, p 239, ll 29-32*) Mr Chaudhuri referred to paragraph 7 of the memorial to the Board of Revenue, *Ex J*, in which it is stated that the plaintiff's body was picked up from the cremation ground and carried away by "some *sannyashi*" (in the singular), but this is obviously a typographical mistake, and in any case cannot indicate a single rescuing sadhu, seeing that in the very same sentence occurs the statement that when the memorialist "regained consciousness some days after, he found himself lying in a hut surrounded by *sannyasis*" (in the plural) (*Vol III, p 93, ll 15-18*) Further on, in the same paragraph reference is made to "one of the Naga *sannyasis*" and "his new associates" (*ibid, ll 21 and 25-26*) The plaintiff's case in the plaint also was definitely that of more than one sadhu (*Vol I, p 120, ll 30-32*), and this was not challenged in cross-examination

BELATED CALLING OF DARSAN DAS AS A WITNESS

Equally flimsy are the grounds for Mr Chaudhuri's suggestion about Darsan Das having been secured by the plaintiff some time in November, 1934 Darsan Das in his evidence gives a full account of his movements ever

since he was initiated by his *guru* Bawa Harnam Das at the age of 20, which would be in the year 1908, seeing that he was 47 at the time of giving evidence (*Vol 11, p 378, l 18 and p 379, l 5*) The account remains wholly unshaken in cross-examination He says that after the *Brahmachari*,—that is how he designated the plaintiff,—had left the company of the sadhus at Braha Chhatra (in Nepal), the witness met him for the first time “about a year ago”, that is to say, in or about the month of January, 1934 (*ibid, p 393, ll 27-28*), and there is no reason whatever for not accepting this statement The plaintiff asked him then to depose on his behalf (*ibid, p 393, l 40*), but he explains why he did not give his evidence until about a year later He went off to Chandranath at the time to attend the *Shivaratri* fair, and from there he proceeded to Brahmangaon He then thought he should go to his Guru and get his permission before he deposed, and so he did He met his Guru at Nankhana Sahab in Bhadra, *ie*, August, 1934, and did not return till about Xmas of that year (*ibid, p 349, ll 4-18*) he says he “arrived at Dacca when the court was closed” (*ibid, p 394, ll 15-16 and p 416, ll 19-20*)

Mr Chaudhuri seizes upon this last statement to show that Darsan Das must have been giving false evidence, seeing that he was actually served with summons at Dacca on the 20th December, 1934, when the court had not yet closed for Christmas vacation (*see Ex Z (70), Vol III, p 329* read with copy of the summons, *App Vol pp 258-259*), but it seems to me that the witness was not pretending to give the exact date of his arrival at Dacca, and there would be no sense in his putting forward the date falsely Darsan Das must have returned before the Christmas vacation there is actually a petition filed by the plaintiff on the 22nd December, 1934, asking for permission to examine a few witnesses before closing his case, and one such witness expressly indicated in the schedule appended to the petition is “one of the sannyasis who carried the second Kumar from the *sasan* to the shed where he was nursed” (*Vol 11, p 297, ll 13-14*)

The fact that Darsan Das, though a material witness, was not produced until at a comparatively late stage seems to me only to indicate that he was the genuine man if the plaintiff was minded to put a fictitious rescuing sadhu in the box he could have easily done it much earlier He, however, preferred to wait till the real man was forthcoming The plaintiff could obviously gain nothing by producing a false witness at a late stage As has been shown above, he had already given out his case in his own evidence long before, so far of course as he could do from his conscious experience, and that case, be it noted, coming as it did from one who proved himself none too clever a witness in the box, Mr Chaudhuri with all his skill could not shake in the least

As for the supposed corroboration of Darsan Das by other witnesses in anticipation, this is said to have been attempted mainly in respect of two particulars, the existence of a cave below the cremation ground and the presence of *naga sannyasis* at Darjeeling in May, 1909 The suggestion that Darsan Das stood in need of such corroboration seems to me to be ridiculous if the story he told was not otherwise acceptable, it was not likely to gain in strength or compel conviction merely because one or two other witnesses came and spoke about there being a cave in the hill-side of Darjeeling or to their having seen wandering sadhus there,—neither of these being after all a very improbable fact

Mr Chaudhuri refers to P W Mati Lal Ganguli as having supplied the necessary corroboration regarding the cave, but all that this witness said

was "At that time the place below the cremation ground was hilly, jungly and *sishnu*, that is, covered with stones one upon another. There were sometimes open spaces in the said rocks and sometimes there were not" (*Vol 11, p 339, ll 18-27*). If this was really evidence of cave-like contraptions of stones, which did not actually exist, one does not know why learned counsel did not direct any cross-examination to the point.

As for the naga sannyasis, the corroboration is said to have come from P W 968, Chandra Singh (*Vol 11, p 88, ll 5-11 and p 92, l 33—p 93, l 3*) and P W 983, Santa Bir Singh (*Vol 11, p 259, ll 29-35 and p 262, ll 20-24*), but P W 967, Ram Sing Subha, already spoke of these sadhus (*Vol 11, p 68, ll 3-13*), and the plaintiff himself had referred to the naga sannyasis long before any of these witnesses (*Vol 4, p 170, ll 23-25*). It does not appear that the presence of such sadhus at Darjeeling was seriously disputed at any stage of the case.

I do not think there is really any substance in the point raised by Mr Chaudhuri regarding the belated calling of Darsan Das as a witness: the suggestion comes with ill grace from those who put forward a bogus Dharam Das (*D W 327, Vol 16, pp 51-88*) in the box without notice, as pointed out by the learned judge (*Vol 18, p 406, ll 4-6, see also order No 1444, dated 11-2-36, Vol 1, p 109, ll 11-23*).

GENUINENESS OF IDENTITY ADMITTED BY DEFENCE WITNESSES

There can hardly be any reason to doubt that the plaintiff's witness Darsan Das was the real person he purported to be, and the suggestion that he was an impostor recoils with amusing effect on those by whom it is made. According to Mr Chaudhuri, he was a sadhu of the name of Gopal Das who was well-known in Bengal by that name, but was made to personate Darsan Das, one of the supposed rescuing sannyasis named by the plaintiff. It is curious, however, that the account which the witness gave of himself, his antecedents, his *guru* and his fellow-disciples came to be "quietly adopted", as the learned judge says (*Vol 18, p 398, ll 9-15*), by the two persons who were afterwards put up by the defendants to give evidence on their behalf as Bawa Dharam Das, *chela* of Bawa Harnam Das, and Bawa Harnam Das, *guru* of Bawa Dharam Das (*D W 327 and D W 373, Vol 16, pp 51-88 and pp 381-388 respectively*). In other words, it was admitted on behalf of the defendants that the witness was, as he himself stated, a *chela* of Harnam Das, his home was in a Punjab village in the district of Ludhiana, his original name was Pakhar Singh, his *guru's guru* was Charan Das, and Dharam Das was his *guru-bhai* or a *chela* of the same *guru*. It was only denied he had another name Darsan Das given to him by his *guru*, or that he had been to Darjeeling (*see, for references, Darsan Das, Vol 11, p 378, ll 11-16 and ll 24-25, p 379, ll 5-6, l 9 and ll 24-28, p 380, ll 18-19, p 395, ll 31-41, p 396, ll 2-3 and p 411, ll 18-19, Dharam Das, Vol 16, p 51, ll 34-35, p 53, ll 18-20, p 66, l 18 and p 79, ll 6-7, Harnam Das, Vol 16, p 381, ll 11 and 17, p 382, ll 2-6 and p 384, ll 4-5 and ll 12-13*).

Quite unwittingly, thus, it seems that the defendants through the two counterfeited *Bawas* they produced helped only to confirm the identity of the plaintiff's witness, and if the latter says he had been to Darjeeling and rescued the plaintiff, it would not be for these two men, impostors as they

were, to contradict his story, as on their own showing they had never visited that place

NOT A TUTORED WITNESS

If Darsan Das was a tutored witness, he need not have made his *guru* give him a second name Gopal Das, not at any rate before the Darjeeling episode, seeing that the plaintiff referred to him as Darsan Das. In his examination-in-chief he said that Gopal Das was a name given to him by his *guru* "some time" after he took the *mantra* (*Vol 11, p 379, ll 25-26*), which, as pointed out above, he had done in or about the year 1908 (*ibid, p 378, ll 9 and 18 and p 379, l 5*). In cross-examination he gave the time as "2 or 4 years" after the *mantra* (*ibid, p 395, ll 36-37*), but he afterwards corrected it in re-examination by saying that "years" was a slip of the tongue for "months" (*ibid, p 418, ll 12-13*), which would certainly be more in accord with his earlier statement. Mr Chaudhuri would, however, see in this nothing but a mark of deliberate false evidence, forgetting that the longer period the witness gave in cross-examination would have suited the plaintiff's case better. To my mind the indication is just the opposite of what counsel suggests.

If it was concocted evidence that the man was out to give, equally might he have avoided mentioning that he had seen the plaintiff, and the plaintiff had asked him to depose, about one year before he actually stepped into the box as a witness on his behalf (*ibid, p 393, l 27—p 394, l 13*). Neither need he have volunteered the other story, again, in examination-in-chief, that he knew Billoo, had been taken to his house at Jaidebpur to treat his father Gobinda Babu for paralysis, had stayed there for a month or a month and a half, and that during his stay he had been questioned about the second Kumar, but given no reply (*ibid, p 393, ll 8-17*). All this meant for him having had to give explanations, but he was quite prepared to face the position, showing only a man fortified with the consciousness of truth. A false witness would not be thus creating unnecessary difficulties for himself.

It is perhaps worth pointing out that nearly all the comments which Mr Chaudhuri is able to make on the evidence of Darsan Das arise out of what the witness states in his examination-in-chief, none really out of any facts elicited in cross-examination.

CORROBORATION

Darsan Das' evidence, as already stated, is corroborated in part by three other witnesses who were examined after him, Bejoy Krishna Gupta, Srish Chandra Gupta and Girija Bhusan Roy. Mr Chaudhuri cavilled at them as "chance discoveries" made by the plaintiff's agents to bolster up the false story of the rescuing sadhu, but Girija Bhusan Roy explains the circumstances under which he came to be "discovered" (*Vol 11, p 441, ll 23-36*), and it was from him that the clue to the other two witnesses was found. Mr Chaudhuri, while contending that these witnesses were called definitely with the object of lending "corroboration's crafty aid" to Darsan Das, still argued that they only helped to locate the "blanket factory" at a site which could not but falsify the evidence given by this man,—supposed corroboration, for some inexplicable reason, turning out to be downright contradiction.

LOCATION OF "BLANKET FACTORY"

This so-called "factory", or *karkhana*, as the plaintiff's witnesses described it, lay in fact to the north of the Kagjhora below the cremation ground, within a triangle formed by the Kagjhora and the Bryngwyn jhora as its two sides and the cremation ground as its base, at a point marked N in P W. Kazi Samshuddin Ahmed's Map of the Municipal Vegetable Garden (*Ex 411, Book of Maps, No 3*) Darsan Das indicated its position fairly correctly when he said that the *karkhana* was about a quarter of a mile downhill from the *sasan* and to the west of it (*p 408, ll 10-11*), which would place it within the triangle

Bejoy Krishna Gupta was not asked anything about the site at all, and merely said that it was downhill and reached by a narrow zig-zag way (*Vol 11, p 424, ll 23-25*)

Snish Chandra Gupta, the next witness, also stated that "one got to it by a zigzag road and after crossing a jhora" (*Vol 11, p 428, ll 27-28*), but he located it to the south of Kagjhora, placing it on what he called the Sedrabong Road (*ibid, p 431, ll 30-36*), and further said that municipal tax had to be paid for it, suggesting that it was on municipal land (*ibid, p 431, ll 21-22*) This was evidently wrong, but the mistake was probably excusable, seeing that he did not own the factory himself, but was only a kinsman of the owner, one Gostha Behari Roy, maternal uncle of Grijya Bhusan Roy (*ibid, p 428, ll 20-22*), and at any rate it shows that the witness was not giving tutored evidence

Grijya Bhusan Roy definitely placed the *karkhana* outside the municipal area, and on land belonging to the Maharaja of Burdwan, on the left side of the path leading to the Sedrabong Electric Power House of the Darjeeling Municipality from Cart Road (*Vol 11, p 433, ll 27-32*) It seems to be clear, however, from the description the witness gives of the first of two alternative routes to the *karkhana* from Judge-Bazar that the site lay to the north of the Kagjhora (*ibid, p. 434, l 22—p 435, l 8*), and he correctly pointed it out as somewhere near N in Kazi Samshuddin Ahmed's Map (*supra*) According to him, to get to the *karkhana* one had to descend from the Cart Road by a *chore-bata* into a zig-zag path winding along further and further downhill till it reached the Power House, going past the *karkhana* "At the point where one gets into the zigzag road from *chore-bata*", he said, "were the houses of Gnrish Ghose, Hemendra Babu and two or three other *bhadralogues*, and another, my *mama's*, which we sold" (*ibid, p 434, ll 33-35*) Unfortunately, the witness went wrong in showing the position of these houses in the map at point M (*ibid, p 435, ll 6-7*), that is to say, somewhere within the triangle and north of the Kagjhora,—yet another proof, by the way, that this could not be tutored corroboration Gnrish Chandra Ghose himself, examined on behalf of the plaintiff, had stated that between his house which was known as "Town End" and the burning ground, lay the Kagjhora (*Vol 3, p 479, ll 26-30*), and it was also admitted on behalf of the defendants that this house stood south, and not north, of Kagjhora (*D W 402, Vol 17, p 209, ll 2-3*)

On a fair reading of the evidence of these witnesses, there could thus be no question, as Mr Chaudhuri would suggest, of the rescuing sadhus having had to cross an impassable chasm in carrying the body from the cremation ground to the first hut to which they went the only jhora they crossed was the small streamlet which intersected the foot-track from the old to the new *sasan* And this is in fact just the evidence which Darsan Das himself gave.

The defendants led some evidence to show that the Maharaja of Burdwan had no lands north of the Kagjhora, and he had no tenant of the name of Gostha Behari Roy, but this evidence which was given, partly through D W 402, Sarada Prosad Bhattacharjee (*Vol 17, pp 208-219*) and partly through D W 412, Suresh Chandra Banerjee (*Vol 17, pp 317-318*), is far from convincing. Sarada Prosad Bhattacharjee says that as *jama moharer* of the Burdwan Raj Estate at Darjeeling, he would receive collections made by the jamadars from the tenants, and enter them up in the *thokas* or personal accounts of the tenants, name by name (*ibid, p 214, ll 1-11*), but neither can he give the year when he became *jama moharer* (*ibid, p 213, ll 42-43*), nor the names of the tenants in 1909 (*ibid, p 215, ll 36-37*). The *thokas*, again, are not produced which might show the name of Gostha Behari Roy. All that the witness remembers is that he entered the Raj service as *kharach moharer* in 1302 B S or 1895, and remained so for 5 or 6 years, after which he became *jama moharer*, continuing to be so for 7 or 8 years, as he once says, or for 6 or 7 years, as he says again (*ibid, p 208, l 13 and ll 21-23, and p 213, ll 43-44*). He refers to a survey of the Maharaja's Town lands by an *amun* Kshetra Nath Kar, but can give no exact information about it, saying that it was made either in 1314 or in 1315 or 1316 B S (*ibid, p 214, ll 11-22*). The survey was actually made in the year 1905-1906, and by Kshetra Nath Shaw, as is shown by a certified copy of the map prepared at the time which was afterwards produced by the other witness Suresh Chandra Banerjee. The witness, however, had not joined the service of the Raj Estate before 1914, and was not in a position either to prove the signature of the *amun* or to say if Kagjhora was shown in the map correctly (*ibid, p 317, ll 26-28*). The map was afterwards marked as *Ex Z(366)* subject to objection (*Book of Maps, No 12*), but it is no more possible to accept this document than to accept the statement of Suresh Chandra Banerjee that on the north of Kagjhora and below or to the west of Victoria Road, the Maharaja had no land (*Vol 17, p 317, ll 30-31*).

If it was Mr Chaudhuri's case that the site of the alleged *karkhana* was on municipal land, and not on land belonging to the Maharaja of Burdwan, as was positively affirmed by Girija Bhushan Roy, one does not know why learned counsel did not challenge the witness himself to produce the rent receipts from his uncle Gostha Behari Roy. It was no use trying afterwards to produce witnesses like Sarada Prosad Bhattacharjee or Suresh Chandra Banerjee without a scrap of document from the Raj Estate to support their bare statement.

That Gostha Behari Roy had a *karkhana* for the making of blankets and medicines near about the place, was in a manner admitted by the defendants, only that they were disputing the precise location of the site. Thus, the question was put to their witness Sarada Prosad Bhattacharjee in examination-in-chief in this form: "Was he (Gostha Behari Roy) tenant on any land of the Burdwan Raj below the Victoria Road in which he used to make blankets or medicines?" (*Vol 17, p 209, ll 11-12*). In cross-examination, again, he was asked: "Have you been to the place or *karkhana* where his medicines were made?" The answer was simply, "No", not that Gostha Behari Roy had no such factory (*ibid, p 216, ll 5-7*).

RIGHT CONCLUSION BY JUDGE

I have no doubt whatever that the learned judge came to a right conclusion regarding the "blanket factory", and regarding the evidence of Darsan

Das and the corroborating witnesses Quite candidly, he referred to a certain "obscurity" in the evidence (*Vol 18, p 379, l 31 and p 398, l 6*), but obviously this was due only to the difficulty of accurate description of the topography of the place, for, as Girija Bhushan Roy very truly observes, "one cannot describe, unless one goes there" (*Vol 11, p 439, ll 33-34*) I cannot help the remark that Mr Chaudhuri might well have spared the learned judge his thoughtless fling that this was only a disingenuous device on his part to get rid of a real difficulty in the evidence in order to come to a finding in the plaintiff's favour at all costs

Having held a local inspection ourselves at the joint request of the parties, I find myself in a position to state that if the learned trial judge had similarly inspected the place himself, as in fact he had been invited to do by the defendants by their petition of the 20th May, 1936 (*Vol 17, p 426*), he would have had no occasion to speak of any "obscurity", "extreme" or otherwise He, however, declined to make such an inspection on the 'ground that it was nobody's case that the hut mentioned by the plaintiff's witnesses still stood on the same site (*Order No 1571 dated 20-5-36, Vol 1, pp 116-117*) all the same, there can be no doubt that a view of the locality would have materially assisted towards a clearer appreciation of the evidence given by the witnesses

It is not necessary to deal with the question of rescue any further suffice it to say that in my view the evidence need not rest on identity at all, but stands on its own merits, not only helping fully to establish the story of rescue itself, but advancing the plaintiff's case of identity as well to a material extent

The learned judge really gave the evidence very much less than its full effect

SUMMARY OF FINDINGS ON DARJEELING CHAPTER

I have now exhausted my review of the main topics of the Darjeeling chapter, making an independent examination of the entire evidence, oral and documentary, with due regard to the criticisms advanced by Mr Chaudhuri, and it is my definite conclusion that the plaintiff succeeds on all material points *I hold without hesitation that the second Kumar did not die at Darjeeling, and that his body was not cremated I hold further,—and in so doing, I recognise I go beyond the trial court,—that he was the person who was rescued by Darsan Das and his companions from the cremation ground of Darjeeling*

FROM DARJEELING TO BUCKLAND BUND

In the view I take, in order to establish the plaintiff's identity as the second Kumar, it should be sufficient for him to show that the man who was rescued at the Darjeeling sasan in 1909 was the sadhu who turned up at Buckland Bund about 12 years later, and any enquiry as to what was the state of his mind during the intervening period, or whether he had any sufficient excuse for not returning earlier, would be wholly immaterial

Darsan Das and the plaintiff himself are the only two persons who give an account of this period, and if this is accepted, there can be no doubt that it carries the identity of the individual whose life-story they describe in one unbroken line through all these years

The story is one of wandering from place to place, from shrine to shrine, in the company of the sadhus, and not only is there no inherent improbability in it, but so far as one can see, there is practically no challenge in cross-examination of the long and extensive itinerary which both witnesses recount in such detail

The learned judge takes the view that from Darjeeling to Buckland Bund the enquiry is not to establish identity, but to see if anything excludes it, the identity being established by other facts (*Vol 18, p 402, ll 24-26*) Mr Chaudhuri maintains on the other hand that in arriving at a finding on the question of identity itself this part of the enquiry cannot possibly be excluded. The enquiry which either of them has in view, however, seems to be not so much as to the same man wandering about for 12 years from Darjeeling to Dacca as one about the abnormal state of mind which this person is supposed to have lapsed into during this period—an all but complete obliteration of all consciousness of his identity and of all memory of his past

ALLEGED "LOSS OF MEMORY" ITS BEARING ON THE QUESTION OF IDENTITY

Mr Chaudhuri makes the point that the plaintiff cannot be believed to be the second Kumar unless he can explain why he did not return home for so many years, and that as he has no other explanation to offer than this alleged loss of memory, it must necessarily be one of the vital facts in his case which he has to prove before he can establish his identity. If this fails, so it is argued, his claim to be the second Kumar must also fail, for it would mean that knowing himself to be the Kumar, he was still roaming about for 12 years in the company of naga sannyasis and virtually as one of them,—quite an impossible situation according to learned counsel. The attack on the learned judge accordingly is that he has treated the question of loss of memory from a perverted standpoint, and the suggestion is that he has deliberately done so in view of the difficulties inherent in what he himself recognizes as the all "very absurd" story of the plaintiff (*Vol 18, p 399, l 29*)

According to my view of the case, as I have explained above, irrespective of any question of loss of memory, the plaintiff's history of this period of life—from 1909 to 1921—is not essential so much for coming to a finding on identity, but really helps to furnish almost conclusive evidence of identity. For once it is established, as I hold it has been, that the second Kumar was the man rescued by the sadhus at Darjeeling, if it is further shown that he was the person who then went about wandering with them, and eventually emerged after a lapse of about 12 years at Buckland Bund, it must follow almost with mathematical certainty, to borrow a phrase of the learned judge, that the plaintiff was the second Kumar, there being no dispute that the Buckland Bund sadhu was the plaintiff. From this point of view, the only significance of the story of loss of memory would be whether or not this was so improbable, because seemingly so "very absurd", as to discredit the whole of the plaintiff's account

NOT A PSYCHOLOGICAL "IMPOSSIBILITY"

As to this, the simple and sufficing answer would be,—as the learned judge points out, and as Mr Chaudhuri himself frankly conceded at one stage in his opening, though he tried to go back upon it in his reply,—that the loss of memory alleged by the plaintiff, however rare and exceptional a phenomenon it might have been, was after all not a psychological or psychophysical "impossibility", and the only question would be whether or not this did occur as a fact,—not that the plaintiff would be bound to prove it for the success of his case, but only to see whether there was anything in it which might be supposed to falsify his story

I consider a discussion of the expert evidence on the subject futile and unnecessary admittedly, abnormal psychology has not yet advanced to the precision of an exact science to such an extent that one may dogmatise about it with certainty, and merely because the experiences of the plaintiff as revealed by himself or by Darsan Das cannot be fitted into one of the known or recorded types referred to by the experts or in standard treatises, it does not in my opinion follow that the plaintiff's story must be summarily discarded as something which could not possibly have happened

ONLY QUESTION, IF THIS WAS A FACT

Looking at the matter from Mr Chaudhuri's point of view, we may examine whether loss of memory has or has not been established as a fact His first complaint is that the plaintiff has failed to give any credible explanation for his alleged mental condition, but this, as I apprehend it, can at best be only a matter of speculation or theorising, and speaking for myself, I am not prepared to discount such a fact merely because no definite reasons can be given to account for it

Mr Chaudhuri's next point which he elaborates at great length is that the story is discredited by the various conflicting and inconsistent versions given of it Loss of memory, he says, is an after-thought on the part of the plaintiff to account for his non-return, his first version being that he was prevented by physical and moral restraint from leaving the sannyasis

If the object was only to find some plausible excuse for not having returned home for 12 years, one cannot help feeling that one explanation was just as good as another, and loss of memory need not have been falsely invented later on just to contradict a case made at an earlier stage

PLAINTIFF'S ACCOUNT NOT TO BE SUBJECTED TO METICULOUS SCRUTINY

In my opinion, it would be not at all fair to subject the evidence to a meticulous scrutiny in order to discover a contradiction Leaving aside Darsan Das' account, whatever versions may have been given must nearly all have emanated from the plaintiff himself, and in recounting the experiences of an abnormal period of his mental life, he could obviously be describing only as much or as little as he happened now to remember after his return to a normal state of mind It would be too much to expect under the circumstances of the case that he should be able to give a perfectly

consistent, connected or coherent account of all that he had passed through if he is to be believed, he must have undergone nothing short of a revolutionary transformation in his mental make-up which he did not recover till many years after, and the surprise is that he is able to say as much as he really does, not that he cannot say more, or say it with the art and finish of a tutored liar. It would baffle even a normally constituted person to recall with precision the state of his mind during, say, a temporary fit of delirium how much more difficult would it naturally be for a man whose mind had been literally turned upside down to say years afterwards how exactly he had felt or reacted to his surroundings at any particular stage of his abnormal life!

Mr Chaudhuri refers to a number of witnesses to whom the plaintiff is supposed to have said that he had often wanted to come back, but that the sadhus would not allow him to do so

Kamal Kamini Devi (on commission),—*Vol 1, p 224, ll 1-9 and p 225, ll 7-10*

Satya Dhenu Ghosal (on commission),—*Vol 4, p 7, ll 24-26*

Ganga Prosad Choudhury, P W 377,—*Vol 6, p 358, ll 38-41*

C R Mitter, D W 26,—*Vol 12, p 503, ll 27-28*

Ordhendra Coomar Gangoly, D W 291,—*Vol 15, p 384, ll 11-12*

PLAINTIFF'S OWN VERSION OF HIS LIFE DURING THIS PERIOD

The plaintiff's story as given in his own evidence has been set out by the learned judge in his judgment (*Vol 18, p 398, l 26—p 399, l 28*) Up to Asighat, it appears his memory was practically an utter blank (*Vol 4, p 101, l 36—p 102, l 3*) this covered a period of about a year (*ibid, p 102, ll 5-6*) He had "no consciousness at all—no knowledge", as he says in cross-examination (*ibid, p 159, ll 27-28*) From Asighat he went to Amarnath, a famous Hindu shrine in Kashmir, in about four years or so (*ibid, p 102, ll 14-15*), and here took place an important incident in his life, for he was given a *mantra* by Dharam Das, and became his *chela* (*ibid, p 102, ll 17-20*) From now onwards the sannyasis began to call him Brahmachari (*ibid, p 102, ll 20-21*), and it was after this *mantra* that for the first time he had an "idea" how he had come to be among these people—an idea that he had been found in a wet condition at Darjeeling *sasan* (*ibid, p 102, ll 21-28*) He could not, however, recall who he was or where he had his home (*ibid, p 102, l 29*) As he puts it in cross-examination "I had ordinary knowledge of things after Asighat—only I did not know my home and people" (*ibid, p 159, marginal note, added when the evidence was interpreted to the witness*) "After the Guru's *mantras*, my knowledge slightly returned. I had no idea of what the world was till the *mantra*" (*ibid, p 159, ll 29-30 and 32-33*) After this he used to think sometimes in his mind where his relations were, and he would tell this to his Guru "We would talk about my going back to my home and relations. Guru said—'I shall send you home when the proper time comes'" (*ibid, p 102, ll 30-36*) He understood that the guru would then let him go back home, and understood further that if he could there rise victorious over his environment of temptation, or conquer *maya*, as he put it,—*maya* meaning fondness for or attachment to the things of the world,—and afterwards returned to his guru, the latter would then initiate him into the vow of *sannyas* (*ibid, p 102, l 37—p 103, l, 3*) The "*proper time*" arrived,

as he explains later, when at Braha Chhatra it flashed upon him for the first time that his home was at Dacca "Go, your time has come", said the guru, "go back home" And then he parted company with his guru and the other sadhus, arriving at Dacca after a year's wandering through various places (*ibid*, p 103, ll 16-22) His guru did not know whether he was a Raja's son, or a Bengalee, or anything about his home or his property. if he had known, he would have sent him home (*ibid*, p 160, ll 8-11).

DARSAN DAS' ACCOUNT

Substantially to the same effect is the evidence of Darsan Das, who also speaks of the giving of *mantra* at Amarnath (*Vol 11, p 388, ll 25-26*), and of the incident at Braha Chhatra, giving in fact a much fuller account of the latter (*ibid*, p 389, l 37—p 390, l 22) "At Braha Chhatra", he says in cross-examination, "the *Brahmachari* said he recollected his home was at Dacca Before that none of us—none of the four—knew that his home was at Dacca Nor that he was a Raja's son or Bengalee Raja's son or if he belonged to Bhowal or where he had come from or who he was, or his name or any particular" (*ibid*, p 407, ll 31-35) As the witness puts it later, "he had not attained *puṇa jñan* (full consciousness) in the sense of knowledge of home and of one's people and affairs until he left us at Braha Chhatra" (*ibid*, p 413, ll 29-31)

"To Court—Then there was *puṇa jñan*, we thought, as he mentioned his home We thought he had come to his *chaitanya* (awakening)

"As he was mentioning his district, Dharam Das thought his *puṇa jñan* had returned, and therefore, permitted him to go" (*ibid*, p 413, ll 32-36)

As I read the evidence of these two witnesses, it means that the plaintiff felt vague longings for his home and his people from after Amarnath, but without knowing where it was or who they were, and he naturally preferred to obey his guru, and wait until the "proper time" arrived when the guru himself would send him back The "proper time" came only when his guru believed his memory had returned, and till then it is obvious there could be no question of his going or being allowed to go, neither he nor his guru knowing the place he was to direct himself to

SUPPOSED INCONSISTENCIES IN VERSIONS OF OTHER WITNESSES

It is just possible that this simple fact might have been understood by those to whom the plaintiff had spoken about it as if he had been prevented by the sadhus from coming back home, though he was willing and anxious to do so, and this may account for the so-called inconsistency which Mr Chaudhuri has been so astute to discover in the evidence of the plaintiff's witnesses If counsel was going to rely on the statements of these witnesses as establishing a contradiction, one fails to see why the plaintiff was not questioned about them some of the witnesses like Kamal Kamini Devi and Satya Dhenu Ghosal had in fact been examined before him

According to Kamal Kamini Devi, the plaintiff is no doubt supposed to have told her that the sannyasis would always stay with him and keep him

"confined", not relaxing their vigilance even when he had to go out for necessary purposes (*Vol 1, p 225, ll 7-10*), but at the same time she did not know if the plaintiff had given out any particulars to the sannyasis about his identity (*ibid, p 224, l 30*) As for Satya Dhenu Ghosal, he said quite plainly that what he understood from the plaintiff was "that he (plaintiff) wanted to come back, but his guru said that *it was not the proper time*" (*Vol 4, p 7, ll 27-30*) It will be seen that Kamal Kamini Devi's statement about the sannyasis mounting guard over him even when he went to answer calls of nature, was put to this witness, though it was not put to the plaintiff, and the answer was "No, I have not heard that" (*ibid, p 8, ll 1-4*) Ganga Prosad Chowdhury's statement merely is that on his asking the plaintiff why he had not come home so long, the latter said "My guru had forbidden me to come" the witness did not ask why the guru had done so, or any further particular (*Vol 6, p. 358, ll 38-42*) This is not only not inconsistent with, but fully supports the plaintiff's version The two defence witnesses on whom Mr Chaudhuri relies also prove nothing to the contrary

Mr Chaudhuri refers to the evidence of yet another witness, P W 167, Hemendra Kishore Acharyya Choudhury, which he says gives a still different version, namely, that the plaintiff did not return home as he preferred the life of an ascetic, but the witness clearly states that the plaintiff was saying, "he had lost all memory of home and his people" The further statement that the plaintiff said he was "living with sannyasis and liked that sort of life without a thought of home", even if it correctly represents what the plaintiff is supposed to have told the witness, does not really suggest a new reason for his non-return (*Vol 5, p 279, ll 20-23*)

It is significant that out of the witnesses who have given evidence on the subject, Mr Chaudhuri is able to pick out only these few to support his theory, and that, even so, he can do no more than rely on statements which are after all not of an unequivocal character As against these, there is quite a respectable body of evidence on the plaintiff's side from men of undoubted credit, showing clearly that the reason why the plaintiff stated he did not return was that he had lost all memory as to his home or as to his own identity Suffice it only to give a few references to such evidence —

P W 437, Hemendra Lal Das (in cross-examination)

"I asked him where he was during his 12 years' absence or why he had not come home before He said he had no recollection as to who he was or where his home was He said that directly he remembered that Dacca was his home, he set out for Dacca I did not ask when he remembered that

Q—Did you realise that he started for Dacca when he remembered that his home was at Dacca and that he was Kumar of Bhowal?

A—He only said he started directly he remembered that his home was near Dacca

Q—Did he say that sannyasis would surround him and would not allow him to come?

A—No " (*Vol 7, p 35, ll 15-26*)

P W 472, Abdul Mannan (in examination-in-chief)

"During my conversation with him at interviews subsequent to the first, I asked the plaintiff about where he was during the 12 years of absence

Q—What did he say?

A—He said he was at various places mentioning shrines
I asked him why he had not come so long

Q—What did he say?

A—He said he had no memory of who and what he was and where his home was" (*Vol 7, p 179, ll 22-29*)

There was no cross-examination on the point

P W 952, *Monmohon Bhattacharjee* (*in examination-in-chief*)

"During this visit I asked the plaintiff where he was during his absence. He said he was roaming with sadhus and sannyasis in hills, jungles and shrines. I did not ask which hills and so forth, minutely I asked him why he had not come back so long. He said he could not remember things. I did not ask when his memory revived."

(*Vol 10, p 463, ll 10-14*)

Here, again, there was no cross-examination

P W 977, *Satnath Banerjee alias Sagar*

"I asked the plaintiff where he was during his 12 years' absence. He answered my questions. I asked him why he had not come back before. He said, I had no memory of anything" (*Vol 11, p 197, ll 13-15—in examination-in-chief*)

"I do not remember when I first asked why he had not come back earlier. I did not know from any other source until he told me why he had not come back so long. I did not hear anybody ask him till the meeting day why he had not come so long" (*ibid, p 205, ll 9-12—in cross-examination*)

One witness had been examined before the plaintiff, P W 5, Suresh Chandra Mukherjee, who said

"At this meeting I had conversation with him. This was about where and how he had lived so long. He said he wandered about in hills and mountains and jungles, and Kashmir and Jalamukhi and Pashupatinath in Nepal and such places. I did not ask him that day why he had not returned so long" (*Vol 4, p 57, ll 34-38*)

"I asked 'If your desire for Raj continued, why did not you come before?' He said he had lost memory of who he was and where his house was and he vaguely recollected having a home somewhere. He asked his guru about his home and the guru would say 'I shall let you know in the fulness of time'. He, the guru, had only said, he, the plaintiff, was a Bengalee" (*ibid, p 58, ll 1-6*)

The witness fully maintained his story in cross-examination (*ibid, p 67, ll 1-20*)

I hold that the plaintiff's evidence as to loss of memory stands wholly unshaken

JHALKI INCIDENT

There is another witness of the plaintiff, P W 645, Anath Bandhu Bhattacharjee, on whom Mr Chaudhuri strongly relies, for the purpose of contradicting the story of alleged loss of memory or loss of consciousness of

identity This witness says that about 20 or 22 years ago, i.e., in 1912 or 1914 (for he was giving evidence in 1934), he had met the plaintiff at a place called Jhalki near Mussoori, seated among a number of sadhus, and that he recognised him there as the second Kurar of Bhowal. He spoke to him he said, "Why are you here?" "Go home." The plaintiff is said to have replied in Bhowali tongue "Guru knows." The witness then asked him when he would go back home. The reply was "I cannot say" (*Vol 8, p 211, ll 18-36*). In cross-examination the witness states that he told the sannyasis that the plaintiff was the second Kumar, a Raja's son, and that his home was at Jaidebpur (*ibid, p 215, ll 36-40*). Addressing them he also said "Send him home. He will be a Raja" (*ibid, p 216, l 4*). The supposed reply of the sannyasis is given in re-examination:

"His is the usual lot of a Raja's son. Look at Ram Chandra, Nai Raja and Maharaja Judhusthur. When his *sam* (evil star, lit Saturn) will pass off, he will go of himself. Why should we bother?" (*ibid, p 218, ll 6-9*)

Whether the sadhus did or did not say this, it was still not an unlikely answer for such people to have given.

I must say I am not particularly struck with the evidence of this witness who is in fact not referred to by the learned judge at all in connection with this part of the case. The witness was purporting to speak of an incident which had happened many years ago, and which had apparently not made any great impression on him, considering his subsequent conduct in not reporting the matter forthwith to the Raj family, as one should expect him to have done, if, as he says, he knew that they had been making enquiries to trace the whereabouts of the second Kumar. Supposing he had met the second Kumar at Jhalki in the company of sadhus at or about the time he mentions, I should still hesitate to accept his recollection so many years later of the conversation which he is said to have had with these persons. His evidence as it stands need not, however, militate against loss of memory on the part of the plaintiff, and in so far as the sadhus are concerned, it shows no more than that they were told about the identity of the plaintiff. But whether the sadhus accepted the statement of the witness or not would be another matter. Darsan Das, as already stated, says in fact that before Brahma Chhatra they did not know if the *Brahmachari* was a Raja's son, or belonged to Bhowal (*Vol 11, p 407, ll 31-35*). In any case, there is his further statement that even if anybody had told them all about the *Brahmachari*, they would still not have let him go unless they had the particulars from the man himself (*ibid, p 419, ll 22-35*).

ALLEGED INCONSISTENCY WITH MEMORIAL VERSION

Another way in which Mr Chaudhuri seeks to discredit the story of loss of memory is by showing a discrepancy between the plaintiff's evidence and the version he gives in his memorial to the Board of Revenue. Paragraphs 7 and 8 of the memorial (*Ex J, Vol III, p 93*), as worded, do not certainly suggest that he was unaware of his identity throughout the whole period of his wanderings with the sadhus. It is no doubt stated in paragraph 7 that as a result of what is described as a "crisis" in his life, he suffered from "a complete forgetfulness of everything connected with the previous years of his life", but he is said to have suffered from it only "for some time", which, read with the sentence which follows immediately after—that "gradually he

regained his senses and found himself as one of the *naga sannyasi*—seems to imply that this state of “complete forgetfulness” continued only during the period he lay unconscious after his body was “picked up from the cremation ground” It is stated further that on regaining his “senses”, from then onwards he led the life of a *sannyasi*, the same as that of his “new associates”, “immersed in their atmosphere for nearly twelve years”, expressing himself through their language and garbed also in their manner, all of which, again, conveys the idea that this was a conscious life he was living, with full knowledge of who or what he was There is no suggestion anywhere that it was at Braha Chhatra that he had his first revival of memory, and that to the limited extent of realising simply that his home was at Dacca

Paragraph 8 then states that after he had travelled all over India for 12 years, his guru advised him to re-visit his native place according to the “custom” of the sannyasis, but it is added that his guru enjoined him neither to reveal his identity nor to return to his family, and that on his part he had no mind to disobey the injunction This, again, is far from being an indication that he had lost all sense of his identity nor is there any hint that he was permitted to come back on his recollecting that his home was at Dacca on the other hand, reference is made to a “custom” of the sannyasis to account for his return to his native place, though in his evidence he stated as follows

“After I took *mantra* I did not hear how long I was to remain a *chela* Nobody told me then, it was to be 12 years, and then there was to be a visit home, and then if I could get rid of *maya* (attachment), I would be initiated Nobody told me that at any time before I came to Dacca” (*Vol 4, p 159, l 34—p 160, l 2*)

It can hardly admit of dispute that the memorial version, taken broadly, does not correspond in all particulars with the case made at the trial, though no doubt it may be possible, by a forced construction, to say that “regaining his senses” in paragraph 7 means only recovery of consciousness, and not recovery from the state of “complete forgetfulness”, and though paragraph 9, again, expressly states that it was from Buckland Bund onwards that “memories of the past life began to quicken within him and an impulse to go back once more to his family grew” The implication is in fact unmistakable that according to the memorial the plaintiff had not wholly lost consciousness of his identity, his categorical statement being that he had been enjoined by his *guru* to conceal it, and he himself was by a conscious effort minded to do so

HOW FAR IT AFFECTS PLAINTIFF'S CASE OF LOSS OF MEMORY

All the same, however, I still think that it would not be quite fair to attach an exaggerated importance to the memorial as Mr Chaudhuri seeks to do The plaintiff obviously cannot disavow responsibility for this document it had been read out to him before he signed it, and he says he would not have signed it, if he thought there had been a mistake (*Vol 4, p 161, ll 12-13 and 14-15*) At the same time, there need be no reason to disbelieve him when he states “I can't say what they (meaning his lawyers) wrote in my memorial to the Board” (*ibid, p 161, l 12*) The plaintiff was illiterate, and would not understand a word of the language in which the memorial had been drawn up he had left it to his lawyers, and naturally, would

not be too censorious of what they had produced. The lawyers must no doubt have acted on his instructions. He himself says that he had told his case to Mr Dwarka Nath Chakravarty and his pleader Amar Bose (*ibid*, p 161, ll 11-12), but the instructions could not have been full or detailed, so far as this part of his life was concerned. If the plaintiff is to be believed, it was only in court that he for the first time revealed his life-history (*ibid*, p 135, l 30). For the purpose of the memorial it was not in fact necessary to go into a detailed account of his life with the sannyasis. One cannot, again, rule out the possibility of the draftsman misunderstanding the instructions given by the plaintiff.

In judging the case made in the memorial, it would in my opinion not be right to lose sight of the purpose for which it had been prepared. It was certainly not intended to be a statement of claim at all, nor was it concerned to give any explanation for the delay in the plaintiff's return. The object was merely to induce the Board of Revenue to cancel the "impostor notice", and hold an enquiry into the plaintiff's identity in his presence, and rightly or wrongly, as the memorial itself will show, for this purpose reliance was placed more on the facts and events which transpired since his advent at Buckland Bund as well as those of his "pre-sannyasi days", rather than on the story of his life during the intervening period.

In my view, therefore, the want of strict conformity of the evidence to the memorial cannot be held in any way to affect the plaintiff's case regarding loss of memory, there having been in fact no occasion for making a case on the point in the memorial.

Apart from relying on paragraphs 7 and 8 of the memorial, Mr Chaudhuri calls attention also to the depositions of Joges Chandra Roy and Rabindra Nath Sanyal in the Defamation case, extracts of which are annexed to the document (*Vol III*, pp 117-118). Both these witnesses say that they saw and recognised the second Kumar at the Darjeeling Railway Station as he was leaving by train a few days after his alleged rescue, and that when they were about to accost him, he turned away his face from them, as if in annoyance, which, it is said, clearly goes to show that he could not have lost consciousness of his identity. The plaintiff was questioned about this in cross-examination, and his answer was that he did not know and had no idea that he had so behaved at the time as if he had been anxious to avoid recognition (*Vol 4*, p 163, l 35—p 164, l 3), an answer which is quite consistent with the case made by him.

As regards the statements of these two witnesses, it is to be observed, in the first place, that they did no more than give their own impression, and I do not think that their evidence as to how the plaintiff had behaved on the occasion can establish that this was a conscious act on his part. Secondly, it would be wrong to suppose that in annexing these depositions to his memorial, the plaintiff in any way accepted or adopted their evidence as part of his case. One does not really see how the statements can be used as evidence against him at all. The plaintiff was undoubtedly a more competent witness in the matter.

OVERCOMING OF "MAYA"

A point on which Mr Chaudhuri laid some stress was that if the plaintiff had completely lost the sense of his own identity and only remembered vaguely that his home was at Dacca, he could not have been sent back by his guru to overcome *maya*, which implies, as he put it, knowledge of himself

in mental association with his former environments. Learned counsel was apparently under a misapprehension. For one thing, there is not only nothing to show that when the plaintiff mentioned Dacca as his home to his guru, the guru might not have supposed this to be a full revival of memory,—not merely of the memory of his home, but also of his own identity—but on the other hand, there is the evidence of Darsan Das, who, in reply to a question from the court, said quite definitely that the sadhus took this to be a sign of *puṇa jnan*. “Then there was *puṇa jnan* (full sense) we thought, as he mentioned his home (wrongly printed as name). As he was mentioning his district, Dharam Das thought his *puṇa jnan* had returned and therefore permitted him to go home” (Vol 11, p 413, ll 32-36).

Then, again, it is I think a misreading of the plaintiff's evidence to suppose that he believed he had been sent home by his guru for the avowed purpose of overcoming *maya*, in other words, that he might submit himself to this final test in order to qualify for initiation as a full sannyasi. Nowhere has the plaintiff said so, though no doubt he says both in his evidence and in his memorial that his guru had forbidden him to reveal his identity (Vol 4, 103, l 40, and Vol III, p 93, ll 30-31). According to his evidence he would be talking with his guru after Amarnath about his going back to his home and relations, and the guru offered to send him home when the “proper time” came (Vol 4, p 102, ll 34-36). When the time did arrive and he was permitted to go, there was, however, no direction by the guru that on going back home he should put himself to the *maya* test, and then return. In cross-examination the plaintiff in fact clearly stated that nobody had told him at any time before he came to Dacca that if he could get rid of *maya*, he would be initiated (*ibid*, p 160, ll 1-2). This is what he understood himself, not his guru's behest (*ibid*, p 102, l 37—p 103, l 3).

As Darsan Das, giving a fuller account of the incident, says, when at Braha Chhatra the *Brahmachari* had his first flash of memory about Dacca, and he mentioned it to his guru, the guru simply enquired if he wanted to go home, and not stay with them (Vol 11, p 390, ll 14-15). The *Brahmachari* asked if he could come back again, and to that the guru replied, “You may come back if your people permit you, but if they receive you and keep you with affection, you need not” (*ibid*, p 390, ll 18-20). There was no cross-examination of the witness on the point, and this evidence is quite in accord with that of the plaintiff himself, lending no support whatever to the theory that the overcoming of *maya* was the object of the plaintiff's return to his native place.

REVIVAL OF “OLD MEMORIES” AT BUCKLAND BUND

It was at Buckland Bund, as people passing him went on saying, “He is the Bhowal Kumar”, that the plaintiff recollected that he was the second Kumar of Bhowal (Vol 4, p 160, ll 29-31). His “old memories” returned—about his home and his relations (*ibid*, p 160, ll 35-36). Mr Chaudhuri asked him if he thought then of breaking the *maya*, and his answer was in the negative (*ibid*, p 160, ll 32-34).

Counsel put him a further question

“Q—Then when you went to Jaidebpur you had remembered all, and only wanted to break the *maya*?”

to which he replied

“A—Yes. That was guru's orders” (*ibid*, p 161, ll 3-5).

Counsel led him to this answer, but what the plaintiff meant was only his guru's injunction not to disclose his identity, an injunction which I do not think would necessarily call up in imagination a picture of himself in association with his friends and relations and the environments of his former life. Such a picture rose to his mind for the first time in the real when he found himself back amidst his own people, and it was then that he felt the lure of family life beginning to grow on him, and realised too that he would have to rise above it, if he meant to return to his guru, as obviously he wanted to do.

CASE IN PLAINT

In a hyper-critical spirit Mr Chaudhuri refers also to the plaint (*Vol 1, pp 119 et seq*) to point out a supposed contradictory case made therein regarding loss of memory. The plaintiff, it is said, only pleads a partial loss of memory as the result of poisoning (*ibid, p 120, ll 32-34*), makes no mention of the guru's behest to go back, and suggests a mere chance return to Dacca "in the course of his wanderings" (*ibid, p 121, ll 9-10*), while expressly averring an "indifference to the world" due to wandering with the sadhus (*ibid, p 120, ll 35-37*).

The criticism hardly calls for serious notice. The plaint does not profess and is certainly not expected to set out details, but gives the case only in broad outline, and this was again a document which his lawyers drew for him (*Vol 4, p 161, ll 15-18*), but on a fair reading of it, there does not appear to be anything pleaded which is inconsistent with the evidence.

To say that his memory was "almost effaced" during the period he was living with the sadhus does not only not involve any contradiction, but seems on the other hand to be just a correct representation of the facts as brought out at the trial, as this would allow for the glimmerings of memory he had after Amarnath and then for the fuller flash at Braha Chhatra. The statement that the loss of memory was due to the administration of poison was only the plaintiff's own explanation for it, the alleged poisoning being stated as a fact, true, not to his "knowledge", but to his "belief and information" (*Vol 1, p 125, ll 25-31*). As he stated in cross-examination, he was not in a position to say that anybody had tried to kill him by poison, as he did not know (*Vol 4, p 161, ll 25-26*). As for the guru's behest to return, there was no such behest and there would be no occasion for mentioning it in the plaint. Then, it is a mis-reading of paragraph 4 of the plaint to say that the plaintiff's arrival at Dacca was accidental. He was not seeking to explain the circumstances which brought him to Dacca, and the words used "in the course of his wanderings" would not certainly be inconsistent with his actual case. Regarding the alleged indifference to the world, this again was a *post facto* description of himself during his wanderings, and did neither purport to be an explanation for his non-return, nor suggest that he was conscious of the world all these years. In cross-examination he said in fact "I had no idea of what the world was till the *mantra*. If I did not know the *sansar* (world), I could not be *sansar-bitrishna* (averse to the world and worldly attractions)" (*ibid, p 159, ll 32-34*).

CONCLUSION

As I have said before, if, as Mr Chaudhuri suggests, loss of memory was necessary for explaining the delay in returning home, I see no reason why

the plaintiff or his advisers should have deliberately made a change of case in regard to this. On a consideration of the evidence, I have no hesitation in saying that Mr Chaudhuri's attempt to assail the plaintiff's story utterly fails. Loss of memory has in my opinion been established as a fact, and I hold that it was neither an after-thought, nor a device to explain something which the plaintiff did not otherwise find it possible to account for. I fully accept the evidence of the plaintiff and of Darsan Das on the subject.

IDENTITY CHAPTER

I may now pass on to the question of identity, the most vital part indeed of the plaintiff's case, which, as I have indicated before, he must have to face as an independent issue, even though he may have successfully met the defendants on their own ground as regards alleged death and cremation at Darjeeling. The trial court has in my opinion dealt with the matter as exhaustively as possible from all points of view, but not of course to Mr Chaudhuri's satisfaction, the judgment on this part of the case, according to learned counsel, not only not resting on a proper foundation, but seeking to avoid the real issues, and being reducible in its ultimate analysis to no more than a finding based on mere recognition of the plaintiff as the second Kumar by Jyotirmoyee Devi, and to a lesser extent only, by Rani Satyabhama Devi. In other words, the suggestion is that the court, instead of coming to an independent decision on a question which it was for itself to decide, only placed two interested parties in the seat of judgment.

MR CHAUDHURI'S CRITICISM OF JUDGE'S TREATMENT

To my mind, the attack is as unfair as it is unfounded. If I understand Mr Chaudhuri aright, the learned judge is supposed to indicate correctly enough the tests which have to be applied to find out identity, but in dealing with the evidence, it is said, he relies on nothing more than mere similarity of appearance. He is charged with relegating what he calls the mind of the plaintiff to a secondary position, and placing in the fore-front only the identity of the body. In point of fact, so it is argued, he does not find anything in the mind of the plaintiff which he accepts or which may be accepted as proving identity, and even as regards physical identity, though he no doubt mentions five heads under which the evidence may be classified, namely, (1) recognition by Jyotirmoyee Devi and Rani Satyabhama Devi, (2) recognition by tenants and by relations and acquaintances, (3) photographs, (4) bodily marks, and (5) general characteristics of the body, yet in actual treatment of the subject, he ignores the second head altogether, and on the third and fourth heads, comes to conclusions only of a negative character,—neither the photographs nor the marks going to establish the plaintiff affirmatively as the second Kumar, the finding as to marks being in fact not a finding of identity by the marks, but of marks by identity,—while under the last head, the findings he records are of an equally inconclusive character. In the result, therefore, it is pointed out, leaving aside recognition by the sister and the grandmother, the learned judge does not treat any evidence as to bodily features as evidence of identity, but assumes identity to explain the alleged "similarity", and as for mental identity, he makes no real or independent examination of the question, but merely says that the plaintiff is to-day what the second Kumar might be.

expected to be, which amounts to finding only a kind of "speculative" similarity. Putting the matter in another form, Mr Chaudhuri says that the learned judge does not regard identity as proved by the bodily and mental features, but simply finds nothing in these features to militate against identity as proved by "direct evidence", thus "direct evidence" being, therefore, something outside body and mind, that is to say, nothing but recognition, which reduces itself, again, to recognition by Jyotirmoyee Devi and Rani Satyabhama Devi—the first only of the five modes of proving physical identity which he himself indicates.

The whole of the judge's reasoning is thus said to move in a vicious circle—the correctness of recognition being supposed to depend upon the identity of bodily and mental features, and such features, again, being held in their turn, not to prove identity, but merely to "endorse" identity proved by "direct evidence".

To support his own line of reasoning Mr Chaudhuri referred to a number of isolated passages which he picked out from different parts of the judgment, but I cannot help saying that it was only an elaborate piece of casuistry he produced by this dexterous weaving together of disjointed quotations. No grosser perversion of the true perspective of the judgment could in fact be presented. As I have already had occasion to point out, one has only to study the scheme of the judgment as a whole to find out how logically and fairly the learned judge has in fact dealt with the question of identity, leaving out not a single test, physical or mental, in arriving at his conclusion.

RELIANCE ON "DIRECT EVIDENCE"

The learned judge no doubt relied strongly on the "direct evidence", and particularly on recognition by Jyotirmoyee Devi and Rani Satyabhama, but this he was entitled to do, only that in my opinion he failed to give effect to it to the extent to which he might and should have done. It is, however, a negation of the truth to say that this was the only or the main basis of his finding.

"I find", says the learned judge, "that the lady Jyotirmoyee Devi did honestly believe that the plaintiff was her brother, and it remains to be seen whether that belief proceeded from a genuine recognition. Mr Chatterjee contends that honest recognition by the sister carries the plaintiff the whole way. It does so in a sense that involves tautology. *Honest belief even in a sister is not conclusive, though it demolishes the utter dis-similarity theory.* It undoubtedly carries the plaintiff a great way, but a single point of difference, like death itself, or a different mind, or proof that he is not a Bengalee, might displace him altogether" (*Vol 18, p 94, ll 28-37*).

This shows quite clearly that the learned judge carefully avoided coming to a conclusion about the plaintiff's identity merely on the strength of Jyotirmoyee Devi's recognition of him as the second Kumar, honest as he held such recognition to be, though no doubt he depended on it as demolishing the defence theory of "utter dis-similarity".

To my mind it is the plaintiff who might have a legitimate ground of complaint that the court below subjected him to far stricter and to a far larger number of tests than it need or should have done. Honest recognition by Jyotirmoyee Devi, and by Rani Satyabhama Devi, as well, followed by

their acceptance and adoption of him as the second Kumar might well have been regarded in the circumstances of the case as sufficient to establish identity, both physical and mental, beyond all reasonable doubt

VALUE OF "RECOGNITION" AS EVIDENCE OF IDENTITY

Recognition as evidence of identity, being based only on personal impression, however *bona-fide*, is perhaps of all classes of evidence the least to be relied on, and may in a sense be regarded as no better than opinion evidence, a mere inference from apparent sameness of appearance, in which peculiarities of form, shape, colour, sound, etc., all contribute only in their totality to produce a composite image in the mind, but there is no conscious analysis or comparison of individual bodily features on the part of the observer. But uncertain or unsafe as such evidence may, therefore, be standing by itself, as a basis for a finding of identity, it may nevertheless acquire indubitable value when supported by other facts such as were present in this case.

The "direct evidence" of recognition by Jyotirmoyee Devi and other near relations on which the learned judge here relied was not recognition, genuine as it was, based on a bare impression of the plaintiff's identity from mere physical appearance, but such impression confirmed at first by actual examination of bodily marks, and strengthened and deepened later by revelation of mental identity through long and intimate association with him in the course of his living in their midst as a member of the same family. This last fact is indeed one of overwhelming significance, the effect of which the learned judge does not appear, however, to have fully realised, as furnishing undoubtedly the best and most convincing evidence of identity, bodily and mental, assuming of course honesty on the part of the relatives.

HONESTY OF JYOTIRMOYEE DEVI

In my opinion the defendants have signally failed to show that the act of recognition by the sister and other relations was or could be dishonest. As I have already shown, the suggestion of a sudden conspiracy on the part of Jyotirmoyee Devi which led her to propound the plaintiff as the second Kumar, knowing him to be an impostor, is a proposition for which there is not the slightest foundation, and Mr Chaudhuri himself was unable to support it before us. If, then, her conduct was *bona-fide* to start with, as I hold it must have been, I for one refuse to believe, supposing she afterwards found out she had made an honest error, that she should still persist in it and cling to the impostor as her own brother. That might have been Lindsay's idea, but is certainly not mine. Lindsay, it will be remembered, writing to the Commissioner of the Dacca Division on the 9th August, 1921, actually suggested that the sisters of the second Kumar having "openly espoused the cause of the sannyasi", it would be "very difficult for them to withdraw from the position they had taken up" (*Ex 435, Vol II, p 337, ll 22-26*), but then Lindsay never believed that these ladies had acted honestly at any stage or could have any sense of honour left in them, though they would have nothing whatever to gain by being a party to such a monstrous fraud. Speaking for myself, I believe every word of Jyotirmoyee Devi when she says —

"By accepting the plaintiff I am a ruined woman, financially speaking
For him alone I had to borrow Rs 10,000/- to 12,000/- I was pre-

pared to lose all for my brother—who would not be? I would not be, if he were an impostor. On the other hand, if he were so, I would see him punished" (*Vol 8, p 315, ll 22-25*)

A simple and straightforward statement on which Mr Chaudhuri dared not cross-examine the witness. Not even Lindsay's suggestion was put to her that having taken a false step, she felt bound almost by a tragic necessity to persevere in it.

MENTAL IDENTITY

Mr Chaudhuri laid considerable stress on mental identity, but though, as I have said, the fact of the plaintiff living with Jyotirmoyee Devi as a member of the same family was the best proof of it, it is remarkable that counsel did not put her a single question to test the opportunities she must have had for satisfying herself regarding the mind of the plaintiff during this period, except only to suggest that he would be always kept surrounded by some persons to tell him the names of the visitors who happened to call on him, and also that he could not answer questions owing to his inability to talk Bengali very well. (*Vol 8, p 370, ll 13-15 and 31-32*) Jyotirmoyee Devi admitted that at Dacca many people would be near the plaintiff, officers and relations or others, but, said she, "they will not tell him things", "we would answer inquiries made of us and the plaintiff inquiries made of him. It is not a fact that we answered questions put to him" (*ibid, p 370, ll 20-21 and ll 29-30*)

Biloo, *alias* Jitendra Chandra Mukherjee, P W 938, a son of Indumoyee Devi, also said

"After the *atma-parichay*, his conversation till now showed not that he was playing a part, but that he was the *Mejo Mama* (mother's second brother). If his conversations showed that he was anybody else, we would have whipped him out of the house" (*Vol 10, p 342, ll 24-27*)

Here, again, cross-examination was singularly lacking to test the statement so emphatically made by the witness.

IDENTITY NOT INFERRED FROM BARE RESEMBLANCE

In dealing with the direct evidence of identity, it is, I repeat, not a fact that the learned judge relied only on recognition by Jyotirmoyee Devi or Rani Satyabhama Devi, or that he relied on bare recognition unsupported by other facts. He had very correctly set the problem before him in the words of one of the defence witnesses, Jaha Bux, D W 336 (*Vol 16, pp 121-122*)

"Q—You saw at a glance that he was not the second Kumar?"

A—One could not see that at a glance. Hence I had a long and good look at him. I told him (*i.e.*, the defence pleader who had taken the statement) a glance was not enough to show that I told him I had decided he was not the second Kumar after taking a good and long look at him, and not at first sight.

Q—How does he strike you at first sight?

A—At first sight he seems to be the same man''

An answer which of course blew up at once the "utter dissimilarity" theory of the defendants, but still, as the learned judge says, pointedly put the question before the court which it was called upon to decide

"Is this the same man, whatever the degree of resemblance?" (*Vol 18, p 132, ll 1-2*)

In other words, identity was not to be inferred from bare resemblance only, because utter dissimilarity was gone

QUESTION BEFORE THE COURT

As the learned judge put it

"I do not agree that the court has to decide between two alternatives, total dissimilarity and identity. The court will have to decide whether it is identity or stops short of it whether the witnesses belonging to all ranks and conditions of life, and of whom there would be no end except for the limit imposed with consent, have been misled by resemblance, or whether they came because he is the same man. Fortunately the court will not have to decide between this mass of evidence and what evidence the other side have produced, by the credibility of the witnesses alone. There are the marks on the plaintiff's body, and there are the photos" (*ibid, p 132, ll 29-30 and p 133, ll 4-12*)

EVIDENCE OF RECOGNITION ANALYSED

It is true that the court below did not find it possible to deal individually with each of the witnesses of recognition of whom there were no less than 967 on the plaintiff's side, but it classified them into various categories, and considered the evidence of some of them under broad heads as typical of the rest, the tenant witnesses alone numbering no less than 473 (*ibid, p 133, ll 14-40*)

It is wrong to suppose that the learned judge ignored the tenant witnesses altogether. He does in fact deal with them, though only in a general way, and though, with his usual fairness, he says that "in the circumstances of this case, it would be impossible to rest one's conclusion upon their testimony, unless the identity otherwise appears, so long as it is explicable by a sense of loyalty to the old house and by a measure of resemblance enough to deceive" (*ibid, p 131, ll 16-19*). There can be no question, however, that he believes the witnesses, who, he says, are "substantial cultivators", and who, in his opinion, "are not discredited by the fact that they cannot analyse or describe" (*ibid, p 130, ll 25-28*). This is also shown by another fact to which he refers, namely, that they came to depose notwithstanding all the efforts of Rai Sahib Jogendra Nath Banerjee and other myrmidons of the estate to shut out and suborn evidence on behalf of the plaintiff (*ibid, p 129, l 24—p 130, l 25*),—a disgraceful chapter in the history of the case which I have had occasion to advert to earlier in my judgment.

The defendants also called tenant witnesses to support their fiction of "utter dissimilarity", but as the learned judge very rightly points out, they were, generally speaking, the product of Rai Sahib Jogendra Nath Banerjee's "sample letter" to which he refers (*ibid*, p 130, ll 17-19 and p 158, ll 9-22)

As regards other witnesses of recognition, the learned judge put them into two classes

- (i) those who certainly knew the Kumar and could not possibly mistake him, whatever their credit, and
- (ii) those whose credit was unquestionable, but whose recollection of the second Kumar might be open to question (*ibid*, p 133, ll 37-40)

TESTS FOR APPRAISING SUCH EVIDENCE

In the case of these witnesses, again, it will be seen that where their testimony amounted to no more than bare recognition, or "belief without recognition", as the learned judge would like to put it (*ibid*, p 156, l 30), it was accepted only for the purpose of excluding total dissimilarity, but the "recognition" which he was prepared to accept and act on as evidence of identity went very much beyond mere "belief" caused only by sameness of physical appearance

In appraising the evidence of recognition, the learned judge was not at all unmindful of the circumstances which, as Mr Chaudhuri rightly points out, might tend to introduce an element of infirmity into this class of evidence, even where it was perfectly honest. Thus, in the words of learned counsel—

- (i) the belief in identity might be induced by propaganda, public opinion and the knowledge that the claimant had already been accepted by near relatives,
- (ii) lapse of years might have brought about an alteration in the features so as to make genuine recognition impossible,
- (iii) necessary powers of observation might be lacking in the observer and his critical faculties might be weak,
- (iv) the witness might have had inadequate opportunities of seeing the original man, or his recollection might be vague or misleading, and
- (v) judgment might be paralysed and an illusion produced by the common weakness of the human mind for romance, or the common desire to side with the majority, or the common failing to show off or excel by identifying a long-lost person

RECOGNITION BY FAMILY MEMBERS

True as these observations are, it is still obvious that recognition by members of the family stands on quite a different footing from recognition by friends and outsiders, and the chances of error would certainly be much less in the case of the former, as there would be no question of propaganda or public opinion to influence their judgment, none certainly of their oppor-

tunities of having seen the original man being brief or inadequate, though their recognition might conceivably be induced by self-deception or a proneness to believe that to be a fact which they wished to believe

The probability of such delusion or wishful thinking on the part of Jyotirmoyee Devi or other near relations was, however, minimised by the defendants themselves by their strenuous denial of the existence of a rumour that the second Kumar had been still living, but the learned judge was all the same fully alive to this, and carefully guarded himself against supposing that because these relatives thought that the plaintiff was the Kumar, that should be sufficient. Referring to the *atma-parichay* and to the action of the family in accepting the plaintiff as the Kumar, he in fact said that despite the utter dissimilarity theory, the court would still have to consider "*whether some resemblance aided by the emotions of the women had not produced the trick, and wish had not become the father to the thought*" (Vol 18, p 87, ll 30-32). As he put it still more forcefully —

"The point, however, is whether the sister or the children of the other sister and her own did in fact recognise him, the plaintiff, that day, although he said he was (?) the Kumar, or whether he, a Punjabi, was induced to say that, with knowledge that he was a different man, with the mad hope that he, looking different as defendants would have it,—or looking similar, if I make a case for them to reduce the absurdity,—will pass as the second Kumar, or whether wish was so much father to the thought that the lady, without recognition, hugged the idea and deceived herself" (*ibid*, p 91, l 41—p 92, l 4)

RECOGNITION BY OTHERS

In regard to the evidence of other recognition witnesses also, the learned judge never allowed himself to forget that mere recognition was at best a matter of opinion, of belief or dis-belief, admitting of honest mistake, which might be induced by a variety of factors. The very classification of the witnesses which he made (*ibid*, p 133, ll 37-40), and the way in which he distinguished between one witness and another, or between one class of witnesses and another, show indeed the caution and discrimination he exercised in accepting this body of oral testimony as evidence of identity. He expressly stated that the effect of propaganda had to be kept in mind in estimating this evidence (*ibid*, p 113, ll 35-37), and in the case of the tenant witnesses, as already pointed out, he did not lose sight of the possibility that their evidence might be explicable "by a sense of loyalty to the old house, and by a measure of resemblance enough to deceive" (*ibid*, p 131, ll 18-19)

JUDGE'S CAUTIOUS APPROACH

Mr Chaudhuri referred to the case of Adolph Beck (*Notable British Trials*, p 205) before the lower court, as he did before us, to illustrate the risk of mistake to which evidence of identity was subject, but this was not overlooked by the learned judge at all. "I recognise this risk", says he, "despite his (plaintiff's) total dissimilarity, but the witnesses before me had not seen the Kumar casually, but seen or known him as one sees or

knows a co-villager, or a fellow citizen in this country, at his home or town residence, a familiar figure, of a known family and striking appearance, on horse-back or tum-tum or, elephant-back in the roads of Jaidebpur or streets of Dacca" (*ibid*, p 145, ll 20-27)

One or two further quotations will perhaps suffice to show how careful indeed the learned judge was to avoid placing the evidence of any of these witnesses on a higher basis than ought to be done. Thus, for instance, referring to P W 908, Kali Mohon Sen (*Vol 10, pp 176-187*), a retired Deputy Magistrate, he says that "although he is good enough to dispose of the utter dissimilarity theory, on a question of identity one would hesitate to act on his evidence" (*Vol 18, p 151, ll 40-41*). Then, again, he quite frankly states that he does not think that all the railway servants of Jaidebpur or Dacca were competent to give "reassuring evidence" on the question of identity (*ibid*, p 153, ll 4-5), just as, of the numerous witnesses who came from Dacca town itself—shop-keepers, traders, ordinary *bhadralogs*, and men of position—who had seen the Kumar there either at the Nalgola house, or in the streets, or at the stables, or in the river as he would take a plunge into it, or in the famous annual *Janmastami missil* (or procession) of Dacca going up and down in his decorated elephant,—he similarly remarks "it will be dangerous to suppose that they are all competent to testify on the identity, if that is a nice question" (*ibid*, p 154, ll 39-40), though he certainly accepts their evidence as well as that of the tenant witnesses to counter the defence suggestion that the Kumar was an "invisible aristocrat" (*ibid*, p 128, l 45 and p 130, l 32—p 131, l 13), or like Adolph Beck, "an obscure man in London casually seen for a day, and then later confused with another, looking like him, and equally obscure and commonplace" (*ibid*, p 154, ll 41-43)

NOT A VICTIM OF "HYPNOTISM"

If, then, anything like a fair view is taken of the learned judge's approach to the evidence of recognition, or of his treatment of such evidence, it seems to be impossible to quarrel with his statement that "the best proof of identity is recognition", the next best thing being "inference of identity from evidence, without recognition" (*ibid*, p 128, ll 17-19), and yet Mr Chaudhuri has thought it fit to cavil at the statement as an *ipse dixit* "entirely opposed to common sense, experience, human psychology and the opinion of the highest judicial authorities"! Ponderous words these, but if one may borrow again counsel's own expression, the view he propounds is "amusing in its childishness"! The recognition which the learned judge spoke of and had in view was not the sort of recognition which might be explained away by self-deception or by the common gullibility of large sections of the public, but recognition which stood the test of scrutiny as being free from all reasonable chance of fraud or error. This no doubt was an extraordinary case in which persons were claiming to recognise a man who had not been seen or heard of for years, and who sprang up all on a sudden as if from the dead, and recognition was inevitably attended with more than the usual risks and difficulties, but there is no reason to suppose that the learned judge was forgetful of these, or let himself fall an easy victim to a certain hypnotism,—the last in fact, as it was suggested, in a process which is supposed to have begun with the plaintiff casting a spell over Jyotirmoyee Devi and this lady in her turn over the rest of the world—Bibhabati and Satyendra of the one part, and Saibalmi and Phani Banerjee of the other, alone excepted!

It is misleading to say, as Mr Chaudhuri sought to make out, that the learned judge founded on mere recognition, treating body and mind merely as elements which might displace identity, not as a necessary part of the evidence of identity. Equally futile is the other contention that recognition of the plaintiff as the second Kumar in the circumstances and at the date it is said to have taken place could not possibly be free from error or the chance of error, however honest the witnesses.

So far, at any rate, as the near relatives are concerned, I should like to emphasise once again that supposing even the extremely unlikely event of their being in error in respect of the bodily features, they could not possibly have gone wrong in recognising the identity of the mind. As Lord Chief Justice Cockburn observed in his summing up in the Tichborne trial —“One man may resemble another. There have been such instances in the world, or imposture would never have been attempted. No man attempts to personate another who does not more or less resemble him (a fact, by the way, which the propounders of the “utter dissimilarity” theory completely forgot). *But no two men were alike within.* If there could be two alike, to begin with, the mind and memory would very soon cease to be the same, for since the Creation no two lives were ever the same, and therefore no two men were ever the same”

RELATIONS WHO RECOGNISED

In the Tichborne trial all the members of the family except the mother were at one in denying the identity of the claimant, and the mother herself, if she was not the victim of an insane delusion, was still obsessed with a belief as to the survival of her son from which she was determined not to be shaken by any consideration, however strong. Here on the other hand it was all different. *In this case all the relations, except only a few, gave evidence supporting the identity of the plaintiff*, of which the learned judge gives a list (Vol 18, pp 142-143), including two sisters and one brother of Rani Bilasmoni, three sons of Rani Satyabhama's brother, a step-son and a cousin of Kripamoyee Devi (sister of Raja Rajendra Narayan Roy), a son of Indumoyee Devi, two sons-in-law of Jyotirmoyee Devi, and a mother's sister of Phani Bhusan Banerjee, not to mention more distant relations. They even included a first cousin of the second Rani herself, Pura Sundari Devi (Vol 4, pp 206-217), and a maternal aunt, Sarojini Devi, P W 1026 (Vol 12, pp 28-38), being the daughter and the surviving widow respectively of Pratap Narayan Mukherjee, a maternal uncle of Bibhabati Devi. Among the exceptions was another cousin of the second Rani, Sukumari Devi, *alias* Alta Devi, D W 280 (Vol 15, pp 269-279), daughter of Pratap Narayan's brother Ram Narayan Mukherjee, who had seen the Kumar when she was barely 15, but her denial of the plaintiff, as the learned judge points out, went perilously near admission (Vol 18, p 180, ll 12-14). The other relations who would not recognise the plaintiff were the second Rani herself, and from her side, her brother Satyendra and her cousin Shyamadas Banerjee (Vol 1, pp 255-278), while from the Kumar's side, these were D W 92, Phani Bhusan Banerjee (Vol 14, pp 104-228), his sister Saibalini Devi (Vol 3, pp 436-472) and the Chota Rani, D W 94, Ananda Kumari Devi (Vol 14, pp 19-95).

Very rightly does the learned judge comment on the fact that there was no other witness from Uttarpara from among the second Rani's own people, her two other maternal aunts, the widows of Suryya Naram and

Ram Narain Mukherjee, were still living (*Vol 12, p 281, II 38-39*, Surrya-naram's widow alive), but they were not called by the defendants (*Vol 18, p 180, II 11-12 and 15-16*)

Tarinmoyee Devi, the youngest sister of the Kumar, was cited by the defendants but not called, neither was she examined as a witness for the plaintiff, but it is idle to pretend that she repudiated the plaintiff, or that her husband Brojolal issued a notice declaring that the plaintiff was an impostor, as was suggested to P W 5, Suresh Chandra Mukherjee in cross-examination (*Vol 4, p 68, II 38-39*) It was the defence case from the beginning that the plaintiff was being sponsored by *all* the sisters, the defendant No 4, Ananda Kumari Devi, actually stating in her pleading that the sisters and the sisters' sons had set up the plaintiff as the second Kumar (*Vol 1, p 187, II 36-40*) Brojolal, it will be remembered, was actually writing to Jyotirmoyee Devi on the 27th May, 1921, asking her to come to Dacca once with the "Kumar" (*Ex 45, Vol II, p 312*), which certainly does not look like his treating the plaintiff as an impostor The learned judge has dealt with the matter fully, and I need not repeat his observations (*Vol 18, p 182, I 18—p 183, I 17*)

It is also a significant fact to which the learned judge calls attention that to support their denial of the plaintiff's identity, the defendants were practically unable to produce a single independent disinterested man of position who had known the Kumar in life, still remembered him and could not possibly make a mistake (*ibid, p 180, I 16-20*), though one should have expected a stream of such witnesses to come forward if the plaintiff was not really the second Kumar Unlike the claimant to the Tichborne estate, the plaintiff here kept himself open and accessible to all, no prior appointment being necessary for an interview with him he was freely mixing with people, attending parties and functions, and in fact inviting and challenging recognition all round without restraint, and yet while the evidence from the plaintiff's side came flooding in till the tide had to be checked by a voluntary effort, the defendants, on the other hand, found themselves almost landed high and dry on barren sands of half-truths and untruths

LACK OF INDEPENDENT WITNESSES ON DEFENDANTS' SIDE

Hard as it is to believe, learned counsel for the defendants actually tried to lay the blame at the door of the trial judge for this hopeless failure on the part of his clients to offer independent evidence in support of their case He solemnly suggested that the judge permitted the defence witnesses to be subjected to "gross and baseless allegations of drunkenness, illicit amour and sodomy" to which no respectable person would willingly expose himself, and that it was partly for this reason that witnesses kept away from the box, it being almost certain that the judge would afford them no protection against such insulting cross-examination All that I can say is that no riler or more unfounded accusation could be made from the Bar against the Bench, and I am amazed that counsel of the position of Mr Chaudhuri should have forgotten himself to this extent It does not appear that this fear of insult in the witness box had kept back a single individual among the numerous witnesses whom the defendants actually called at the trial A counsel who uses slander and vituperation of the judge as a weapon to defend his clients only betrays the weakness of the cause he is out to support

The few independent respectable witnesses whom the defendants have called, like, for instance, Lt-Col Pulley, D W 1 (*Vol 5, pp 124-150*), J T

Rankin, I C S (retired), D W 2 (*Vol 12, pp 81-99*), K C De, I C S. (retired), D W 52 (*Vol 13, pp 103-125*) and J N Gupta, I C S (retired), (*Vol 13, pp 27-30*), give evidence which is really valueless on the question of identity

ELEMENTS IN REAL RECOGNITION

In weighing the evidence of identity given by the plaintiff's witnesses of recognition as against that of non-identity coming from the other side, it should not be forgotten that the important thing to keep in view is not merely what opportunities the witnesses had of acquainting themselves with the second Kumar before his disappearance, but also to what extent they made themselves competent by observation and association to form a judgment about the plaintiff himself, but if I am not mistaken, this is a consideration which learned counsel for the defendants somewhat appeared to overlook. Otherwise he would not have complained that there was no "spontaneity" in the recognition on the part of the plaintiff's witnesses. Real recognition, according to him, is a kind of instinctive impression made upon the mind through a perception of identity, whereas an inference from a comparison of common points or other facts is not recognition, but the result of an exercise in observation and mental argument. If, therefore, in a given case the first has to depend for its acceptability on the second, then it has no independent value at all and may well be put on one side. The learned judge, he says, does not consider whether the recognition spoken of by the witnesses was real recognition in this sense based on mere impression, or an inference of identity from other data. It seems to me that this is no more than an objection to the classification of the evidence, not to its acceptance, and I should have thought that recognition when it was founded on reflection and judgment possessed a much higher value than mere casual impression from physical appearance. The circumstance which according to learned counsel constitutes an element of weakness helps in my opinion only to place the evidence on a surer and stronger basis. Several of plaintiff's witnesses, it will be seen, not all, say that their first inclination was to treat the plaintiff as an impostor, but though they came as unbelievers, they stayed to be converted, a fact which certainly goes to lend an added assurance to their opinion. There were others of course with whom recognition was of an instant character.

Mr Chaudhuri forgets that it is such "spontaneous" recognition which in fact is more liable to error, however honest it may be, and that is why, as I have pointed out before, the learned judge put before himself the question—Is the plaintiff really the same man, despite any superficial physical resemblance?

If "spontaneous" recognition is thus not always a very safe ground for deducing identity, "spontaneity" of non-recognition must be even less reassuring as evidence of non-identity, and it will in fact be utterly worthless when such evidence comes from persons who had only casual opportunities of observing the man whose identity they were disputing.

"SPONTANEITY" OF RECOGNITION AND OF NON-RECOGNITION

It is this fact indeed which to a large extent robs the so-called independent evidence on the defendants' side of all value. Take, for instance,

D W 1, Lt-Col Pulley (*Vol 5, pp 124-150*), whose position as an A D C to the Lieutenant Governor might be supposed to carry weight and authority, but as the learned judge points out, the witness himself shows how limited was his contact with the second Kumar, if he had any contact with him at all. Mr Chaudhuri said that the judge's finding about the witness was "extraordinary", because he took the charitable view that the latter must have unwittingly allowed himself to be misled by the defendants' advisers, but the only other alternative would be to say that he was a deliberate perjurer. I may say that I fully accept the learned judge's criticism of this evidence, and hold it as absolutely valueless on the question of identity (*Vol 18, p 164, l 38—p 167, l 2*).

Take, again, J N Gupta, I C S (retired) (*Vol 13, pp 27-30*), about whose respectability there could be no question, but he saw the second Kumar together with his brothers only once in 1908 when a friend took him out on a shoot with them, and they were all in *shikar* dress, and he saw the plaintiff in 1925 when he had only "one or two minutes" talk with him (*ibid, p 29, ll 11-12*). As a witness of non-identity, he was obviously useless, even if no importance be attached to his off-hand opinion that the plaintiff had "some general similarity" with the Kumar he had seen before (*ibid, p 29, ll 18-19*). The learned judge, I hold, took an entirely correct view of his evidence (*Vol 18, p 167, ll 3-22*).

I do not find it necessary to refer to the other defence witnesses coming within this category: suffice it to say that I fully agree with the learned judge in his observations regarding their evidence, which I may add are characterised by the utmost fairness.

As regards witnesses like J T Rankin (*Vol 12, pp 81-99*), or H C F Meyer (*Vol 3, pp 335-369*), or Mrs Meyer (*Vol 3, pp 372-373*), or Sarada Prasanna Ghose (*Vol 2, pp 272-293*), persons who undoubtedly had seen and known the second Kumar, the learned judge has given his reasons fully why he is still unable to accept their evidence on the question of identity, and I deem it enough to state that I entirely concur with him, notwithstanding Mr Chaudhuri's criticisms (*Vol 18, p 177, l 41—p 179, l 22, p 170, l 4—p 171, l 8, p 171, ll 9-34 and p 176, l 12—p 177, l 40*).

DENIAL OF IDENTITY BY SECOND RANI

It is perhaps, however, necessary to say a few words regarding the denial of identity by the second Rani, who cannot certainly be dismissed as an incompetent witness on the point, having had passed seven years of married life, if not of married bliss, with the second Kumar. She doubtless had an opportunity of forming an idea about his physical appearance, and might be expected to be able to recognise her husband if she saw him after an absence of even 15 years, though, curiously enough, but perhaps not unnaturally, she failed to recognise him in an admitted photograph of his (*Ex XL, Photo Album, Vol III, p 2*), said to have been taken at the age of 14 (*Vol 12, p 294, ll 12-14 and p 312, ll 11-14*),—a fact, by the way, which the learned judge finds it necessary to notice in order to refute Mr Chaudhuri's contention that one ought to be able to see at a glance the same individual in several photos taken at different periods of his life, whether one did or did not know the man all through (*Vol 18, p 127, l 46—p 128, l 1*). But so far as the plaintiff was concerned, it was impossible for the second Rani to approach the question of his identity with an open mind rightly or

wrongly, as she makes it perfectly clear in her evidence, she had committed herself irrevocably to the position that her husband had died and his body had been cremated at Darjeeling, and she could not but regard any other person claiming to be the second Kumar as an impostor, however overpowering the physical resemblance might be between the two

She had seen the plaintiff in court on the day her deposition commenced, and when she was asked in cross-examination if she had particularly noticed at the time the features of the face—nose, eyes, eye-brows, lips and ears—she gave a characteristic answer “I noticed them, *not with the idea of finding out whether they are like Mejo Kumar’s*, but with the idea of finding out what they are like in him (plaintiff)” (*Vol 12, p 294, l 29—p 295, l 5*)

She had seen the plaintiff also at other places—on the first few occasions from the portico of her house in Lansdowne Road some three years after his arrival, as he drove past in a phaeton with Budhu seated by him (*ibid, p 264, l 23—p 265, l 11*), and later several times, near the Victoria Memorial on the *maidan* and in the Strand near the Eden Gardens (*ibid, p 268, l 32—p 269, l 22*) She saw him again in November, 1934, in College Square as she was passing along, when the plaintiff’s car happened to drive up alongside hers owing to a traffic hold-up (*ibid, p 214, ll 31-37*) She had, however, never heard the plaintiff speak, nor spoken to him (*ibid, p 294, ll 27-28*) At the Victoria Memorial she had “the best look” at the plaintiff, as the plaintiff had also a “keen” look at her, the wheels of her landau almost touching those of the plaintiff’s phaeton (*ibid, p 269, ll 16-22*)

These chance encounters between the second Rani and the plaintiff, if they were a fact, might doubtless be supposed to have given her sufficient opportunities of recognition or non-recognition, as on her own statement the plaintiff had never tried to hide his face (*ibid, p 270, ll 4-7*), but then she never felt the necessity of seeing the plaintiff with a view to resolving any doubt in her mind as to his identity

ALREADY COMMITTED

She in fact made her position quite clear to her husband’s mother’s sister, Sudhangshu Bala Devi, one of the plaintiff’s witnesses of identity (*Vol 2, pp 230-248*) Admittedly, this lady paid the second Rani a visit at her house in Lansdowne Road in order to request her to “see the plaintiff once” and satisfy herself personally, but what was the second Rani’s reply? “*What shall I do on seeing him?* I have heard from my brother and from others that he is not the same man, he is a Punjabee He has come in the guise of a sadhu only for the purpose of getting hold of the Raj Estate” (*ibid, p 233, ll 22-27*) Bibhabati herself gives a not very different account of the interview in her examination-in-chief According to her, Sudhangsu Bala said “This sadhu who was come—why don’t you see him once?” She replied “If it were necessary to see him, would I wait till she spoke?” She added “Besides that, I have seen him” Sudhangsu Bala was herself a widow, and knew her lot, and knowing that, how could she possibly make such a request? (*Vol 12, p 214, ll 21-28*) There lies the key to her whole attitude in the matter of recognition or non-recognition *What should she do on seeing the plaintiff?*

It is no wonder that when Rani Satyabhama Devi sent her a registered letter on the 21st July, 1922, imploring her “with all affection” to come to Dacca and “reveal the truth” for herself (*Ex 58, Vol II, pp 431-432*),

the second Rani refused to accept the letter,—giving it as her explanation that “the registered post frightened her”, and she feared that this might be a move on the part of the old lady who had been keeping the plaintiff in her house to obtain a “receipt” from her, whatever that might mean! (Vol 12 p 219, ll 18-22) P W 937, Abinash Chandra Mukherjee, an employee of Rani Satyabhama, proves that he had written the letter under her instructions (Vol 10, p 293, ll 41-43)

After all this, one does not know if any importance whatever can attach to Bibhabati's denial of the plaintiff's identity to her the question was not an open one at all, and not only did she not have any use for investigating the matter for herself, but she studiously abstained from all enquiry she had met the plaintiff several times here and there, but the meetings were “accidental” and not of her seeking (Vol 12, p 270, l 38 and p 271, ll 4-5), and if she had a view of the face on such occasions, at close quarters or otherwise, it awakened in her no desire, not even a curiosity, to see whether it bore a resemblance to that of her husband. Conduct like this would doubtless be just as one should expect of a Hindu lady who knew of a certainty that her husband was dead, but then it would rob her statement that the plaintiff was not her husband of any independent value which it might otherwise be supposed to possess, and in any case it could not outweigh the positive testimony of the sister or the grandmother or other members of the family who affirmed and were in a position to affirm the identity of their long-lost relation, not only from what they had seen of the bodily features, but from the opportunities they had of examining the mind in the intimate intercourse of family life

DENIAL OF RANI SATYABHAMA DEVI'S RECOGNITION

The second Rani went the length of denying that Rani Satyabhama Devi had accepted the plaintiff “I don't believe that she had accepted the plaintiff as her second grandson” (Vol 12, p 266, ll 13-14) She had of course made no enquiries of the old Rani herself, but heard about it from people coming from Jaidebpur (*ibid*, p 266, ll 23-28), she was repeatedly asked if she had found the necessity of enquiring from her direct, but would not give a straight answer (*ibid*, p 266, ll 29-35), finally adding, somewhat inconsistently “For I knew if I sent to her, I would not get her real opinion” (*ibid*, l 36) she knew that “those who were setting up the plaintiff had great influence over the Rani and she could never rise above that influence” (*ibid*, p 267, ll 3-4) She actually suggested that Rani Satyabhama Devi was herself unwilling to come to Dacca to live with the plaintiff in the same house, but had been forced to do so by Jyotirmoyee Devi and the sister's sons, though all this was hearsay (*ibid*, p 267, ll 32-33)

Like her counsel, Bibhabati Devi really took up an impossible position regarding this matter. There can be no doubt that Rani Satyabhama Devi had for a fact accepted the plaintiff as her grandson, admitting him into the intimacies of her family as such, and the defendants knew it as well, otherwise they should not have been at so much pains to establish that the old lady was in her dotage, suffering from impaired eye-sight and otherwise incapable of forming an independent judgment, as Bibhabati herself sought to make out (*ibid*, p 267, ll 19-21 and p 282, ll 17-25) The reason why the latter was still struggling hard to deny this fact is not far to seek. She knew that no lady of position and respectability would live in the same

house with a stranger she would not do such a thing herself even at her brother's request, and could not conceive of her mother or grand-mother doing so either (*ibid*, p 267, l 36—p 268, l 4)

That is why she began first with a false denial, and then with a qualified statement—"I know very well that she (Rani Satyabhama) *did not altogether accept* the plaintiff as the second Kumar, but had her suspicion" (*ibid*, p 267, ll 26-27), and an attempt, equally false, to find an explanation for the fact of acceptance. She had not the courage to impute dishonesty to the Rani. "Then you are not imputing dishonesty to her—not saying that she was falsely and dishonestly accepting the plaintiff?"—"I don't want to say that" (*ibid*, p 283, ll 37-39)

RANI SATYABHAMA DEVI'S LETTER TO COLLECTOR

Bibhabati admits that when Rani Satyabhama accepted the plaintiff, the other side began to say that she had lost her eye-sight and her faculties (*ibid*, p 282, ll 17-19), and it appears that because of such talk the Rani got her vision tested by Lt Col M McKelvie, I M S, Civil Surgeon of Dacca, on the 20th July, 1922, who certified that for her age (said to be about 90) her vision was good and she was able to count the test dots and recognise faces (*Ex 74, Vol II, p 427*). On the 29th July following she also wrote to the Collector of the District, J G Drummond, asking for an enquiry into the plaintiff's identity in imploring terms, and in this letter (*Ex 274, Vol II, pp 428-430*) she said that to make sure that in her old age there was no defect in her vision and her eyes had not deceived her, she had got herself examined by the Civil Surgeon. Her recognition of her grand-son, she maintained, could not, therefore, be an illusion, and lest there should be still any suspicion about it, she asked that Mrs Drummond might "kindly condescend" to come over to her place once and see her herself and report to him about her physical condition (*ibid*, p 430, ll 4-12)

The original letter was called for by the plaintiff by a petition dated the 6th September, 1934 (*Vol 10, p 123, l 28—p 124, l 16*), but it was not forthcoming, and a true copy was accordingly proved by P W 959, Bibhuti, alias Chandra Sekhar Banerjee, son-in-law of Jyotirmoyee Devi (*Vol 11, p 34, ll 3-10*), cross-examination on the point being declined. Bibhabati, although she did not pretend to have any knowledge about this letter, had still no difficulty in suggesting that it could not have been written by Rani Satyabhama herself, but must have been caused to be sent by "those behind her" (*Vol 12, p 283, ll 25-26*), by which she meant Jyotirmoyee and her sons and the sons of Indumoyee (*ibid*, p 282, ll 6-7). That was also the suggestion of her learned counsel, but its puerility is self-evident. It would only show that those who had contrived this letter were so sure of the Rani's eye-sight and faculties, physical and mental, that they were prepared to face the risk of Mrs Drummond, coming to examine the lady herself, and they also took the risk of being found out by the Rani as having done something behind her back in case the Collector's wife happened to turn up. It is idle to say that the letter might not have been actually sent to Drummond: there is Bibhuti's unequivocal statement that the copy produced was a correct copy of "the letter sent by Satyabhama Devi to the Collector", and as already pointed out, there was no cross-examination of the witness. Apart from the medical certificate, there was reliable oral evidence on the plaintiff's side regarding the Rani's faculties and eye-sight, and I see no reason to disagree with the

trial judge in his estimate of this evidence, or, I may add, in his conclusions on the whole question of Rani Satyabhama's conduct (*Vol 18, pp 116-119 and pp 181-182*)

NATURE AND CHARACTER OF PLAINTIFF'S EVIDENCE OF RECOGNITION

I do not think it necessary, and it would in fact be wearisome, to deal individually with each of the numerous witnesses who have been examined on the one side or the other on the question of recognition, and deem it enough to state that in my opinion the defendants have wholly failed to shake or displace the evidence which the plaintiff has adduced in support of his case on this head. I am not prepared to sweep aside this strong body of respectable and reputable testimony, and to hold, as Mr Chaudhuri invites us to do, that it is either perjured or mistaken evidence. Men of standing and position, unconnected with the family and with no ulterior interest to serve, who had seen the Kumar in life, and also the plaintiff, and might be trusted to have been able to form a competent judgment, hard-headed men not shown to be given to romancing or liable as to be swept off their feet by false propaganda or pre-conceived notions, have all come forward to give evidence in favour of the plaintiff, and they cannot be summarily dismissed either as a set of knaves or as a set of fools in the clutches of a knave. Nor is it possible to dispose of the whole body of relatives and kinsmen—sister, sister-in-law, sisters' sons, grand-mother, mother's sisters, mother's brother, cousins, wife's cousin and wife's mother's sister, not to mention others more distantly connected—by saying that they had all entered, or been led to enter, into a gigantic conspiracy to compass the moral and financial ruin of a daughter-in-law of the house against whom they bore no grudge or spite, by invading the sanctity of her widowed life on the one hand and depriving her of her estate on the other.

CONTRAST WITH DEFENCE EVIDENCE

No one will, and the learned judge does not, for a moment pretend that the same degree of value attaches to the testimony of each witness, or class of witnesses, on the plaintiff's side, but in vivid contrast to the whole mass of the plaintiff's evidence stands on the one hand the body of defence witnesses who pledged themselves with thoughtless complacency to the theory of "utter dissimilarity", and on the other, the small group of disinterested and respectable persons produced by the defendants, who on their own showing proved their utter incompetence to speak to identity with any assurance,—with just a few thrown in, who, though competent, could not yet be trusted to give unbiassed, or wholly unbiassed, evidence.

DEFENCE THEORY OF "UTTER DISSIMILARITY"

Thus alleged absence of any likeness between the plaintiff and the second Kumar to which witness after witness was speaking, parrot-like, on the defendants' side must doubtless have been an utter fiction, resorted to, it seems, only to discount the plaintiff's story as to his having been suspected, if not recognised, to be the second Kumar while at Buckland Bund, a story which might be supposed to lend support to the rumour so strongly relied

on by the plaintiff, and equally stoutly denied by the defendants, that the Kumar was living

A MERE FICTION TO DISCOUNT STORY OF RUMOUR

The rumour, as is obvious and as the learned judge himself points out, could not prove the truth of its contents (*Vol 18, p 49, ll 38-39 and p 51, ll 7-8*), and it could no more establish identity than prove that the body of the Kumar had not been cremated. All the same, the existence of the rumour was itself a fact of which the relevancy could not be questioned as tending to explain a relevant fact, and it was certainly capable of being proved, as in fact it was proved by hundreds of witnesses on the plaintiff's side speaking to it, witnesses whose evidence on the point the learned judge has accepted (*ibid, p 51, ll 30-33*) and I also see no reason to reject. The plaintiff's case on this point certainly receives strong support from a document on which the defendants themselves rely (*Ex Z(33), Vol II, pp 175-176*), Rani Satyabhama Devi's letter to the Maharajahdhiraj of Burdwan of the 3rd September, 1917, in which she expressly referred to a rumour said to have been current in various parts of Bengal to the effect that her second grand-son had been rescued by sannyasi from the cremation ground at Darjeeling, and was still living as a recluse with them. It is not impossible, but difficult to believe, that such a rumour could have started all on a sudden 8 years after the supposed death of the Kumar, or that any credence could have been attached to it by the Kumar's people to the extent of making the head of the family write to the Maharajahdhiraj of Burdwan, unless there had been a similar rumour or rumours from before. To my mind the letter undoubtedly furnishes an additional ground for accepting the positive testimony of the plaintiff's witnesses who spoke of rumours from 1909.

To discredit the plaintiff's story, Mr Chaudhuri referred to the lack of consistency in the evidence regarding the form or contents of the rumour, but it is common knowledge that a rumour, though it may arise from facts, hardly ever conforms thereto, and it is its characteristic to be assuming different shapes at different times as in every ear it spreads, on every tongue it grows. The varying forms which the witnesses give to the rumour as they heard it seem only to confirm the truth of their testimony that the rumour existed as a fact.

The existence of an antecedent rumour of some kind was in fact implied in a question which was put by Mr Chaudhuri himself to Jyotirmoyee Devi touching the visit of the *moun sannyasi* to Jaidebpur in 1917. This visit which was spoken to by Jyotirmoyee Devi (*Vol 8, p 294, l 36—p 295, l 2*) is admitted by the defendants, and they say in fact that this was the genesis of the rumour which led to the writing by Rani Satyabhama of her letter to the Maharajahdhiraj of Burdwan. Mr Chaudhuri asked

"Q—Did you all say that the *moun sannyasi* who had come was very much like the second Kumar in appearance?" (*ibid, p 339, ll 20-21*)

Jyotirmoyee's answer was of course an emphatic no, but why should she or any other member of the family have been at all eager to fasten upon this mute ascetic as their long-lost relation, unless a rumour had already laid the germ of a hope in their mind that the second Kumar might be still living?

One should have imagined, as the learned judge points out (*Vol 18, p 67, ll 34-37*), that the defendants would concede the rumour, and concede also a superficial resemblance between the plaintiff and the Kumar, in order to get a background for the supposed action of Jyotirmoyee Devi in running an impostor to play the role of her second brother, but the fact remains, they fought shy of either, even as falsehood fights shy of truth, its greatest enemy

AN ABSURD EXPLANATION

It is not to be supposed that the defendants did not realise the absurdity involved in this attempt to deny the least trace of similarity between the plaintiff and the second Kumar, and one can easily understand, therefore, why learned counsel on their behalf should have tried to avoid committing himself to a definite case on the point, until, pressed by the court, he could do so no longer, and ultimately had to find himself fixed on the horns of a dilemma

As early as the 8th January, 1934, learned counsel for the plaintiff in fact enquired, in view of the variation in the cross-examination from after P W 5, Suresh Chandra Mukherjee (*Vol 4, pp 44-54*), whether the defendants still maintained that the plaintiff was totally dissimilar in appearance to the second Kumar. Mr Chaudhuri's reply was that his case was in the written statements, and that he would state it more fully in his opening (*vide Order No 500 dated 8-1-34, Vol 1, p 32*). Nothing, however, was to be found in the pleadings, and it appears that the trial court had to elicit it from counsel by a specific question in the course of his opening. The learned judge took it down in Mr Chaudhuri's own words as he put it then.

"They are not so utterly different that any body who says that they are the same necessarily gave false evidence"—

a remarkable toning down of the case put to the plaintiff's witnesses (*Vol 18, p 132, ll 3-28*)

Before us Mr. Chaudhuri repeated his first formula of total dissimilarity, but when it was pointed out to him that the more he emphasised the dissimilarity, even after the plaintiff had stripped himself of his ashes and his beard, the more the difficulties he created for himself, he tried to explain, to put it again in his own words, that all that he wanted to say was that to those who knew the second Kumar intimately, the plaintiff was utterly dissimilar, that is to say, taking the features and the conglomeration of features going to make the face, the two faces were utterly different, but he added that there was yet sufficient resemblance which might deceive the ordinary person who did not know the Kumar intimately or was not an accurate observer. In other words, he said, to those who knew the Kumar intimately deception should not be possible, but those who knew him distantly might be deceived.

CONTRADICTED BY DEFENDANTS' PLEADINGS AND EVIDENCE

This was as near an admission of similarity as counsel could induce himself to go, though it was not quite the same thing as saying that there was sufficient similarity, but that it was not such as could mislead the intimate relations. But the admission such as it was went directly against the case

made by his clients in their written statements, and against the evidence of Bibhabati Devi herself, not to speak of the numerous other witnesses, strangers or relations, who had vied with one another in disavowing even a remote resemblance. In paragraph 21 of her written statement (*Vol 1, p 177*) Bibhabati Devi in fact averred as "absolutely false" that "many people recognised and many others guessed the plaintiff as the second Kumar while he was staying on the Buckland Bund, (and) that the relations of the plaintiff and the local zemindars were convinced of his identity and pressed him to declare as such". The Chota Rani, Ananda Kumari Devi, too, in paragraph 6 of her written statement (*ibid, p 186*) made a similar denial of the alleged recognition of the plaintiff by tenants and relations alike. In her evidence Bibhabati Devi was not content with saying, after taking (at her own counsel's request) "a good look" at the plaintiff, that he was not the man who was her husband (*Vol 12, p 196, ll 14-16*), but was positive that no one could possibly mistake the one for the other.

"Q—If anybody says that as between the second Kumar and the plaintiff there is not such difference that a man cannot mistake one for the other, would you agree?

A—No. That would not be at all true.

Q—If anybody says that they look like twins, would you agree?

A—Oh no, on no account.

Q—Or if anybody says that the sight of the plaintiff reminds one of the second Kumar?

A—I would not agree at all.

Q—You say then there is no resemblance between the two?

A—None in my eyes. None that I can see.

Q—If any man, however respectable, says that there is resemblance between the two striking, would you believe him?

A—Not in the least.

Q—If anybody says there is resemblance between the two?

A—I would say there is none" (*ibid, p 285, l 29—p 286, l 8*)

She was reminded about the evidence given by J. T. Rankin, D.W. 2, one of her own witnesses who had specially come out from England to depose in the case, but who unfortunately did not survive to read and sign his deposition as recorded by the court. Witness was asked if he would pledge his oath that those had come and identified the plaintiff as the second Kumar necessarily gave false evidence, and his answer was

"If a person said he might be looking like the second Kumar, he might be telling the truth for aught I know" (*Vol 12, p 84, ll 13-17*),—an honest admission no doubt, enough to rule him out as a witness of non-identity, but which Bibhabati was not prepared to accept as correct evidence.

"Q—Do you agree or disagree with Mr Rankin's testimony that if witnesses have come and sworn to a striking resemblance between the Kumar and the plaintiff, you cannot call such witnesses untruthful?

(Objected to. Allowed. Witness asks that the question may be explained and she asks it twice.)

Q—Do you say that these witnesses are untruthful?

A—Either untruthful or mistaken—they had lost their memory of the Kumar during this lapse of time" (Vol 12, p 288, l 35—p 289, l 5)

CONCESSION OF SLIGHT SIMILARITY IN ARGUMENT—AS INSINCERE AS UNMERITORIOUS

The slight concession of similarity which learned counsel had found it necessary to make in his opening was thus unceremoniously jettisoned by his own client in her evidence. It was a concession which had really no content in it, and I am not at all sure that counsel believed in it himself. Pressed by the court, he could not of course help stating his case, but in so doing, as he explained to us, he took particular care to use the words of Lord Chief Justice Cockburn, not his own, adding with astonishing frankness, if I am quoting him aright, that he was not going to give the learned judge in the *mofussil* anything to catch hold of—for, "if you made an admission, it would be only tied round your neck and you could not get away from it"! The object thus was not to make a statement he meant to stand by, but to avoid making one which he might not be able to get out of! Whatever one might think of this exhibition of unconcealed contempt for the *mofussil* court, there seems little reason to doubt that learned counsel must have felt that an admission of some resemblance, however slight, would be a halter round the neck which would strangle his clients.

In point of fact it is not the admission, but the theory of utter dissimilarity, the absurdity of which it was sought to mitigate by the admission, that must prove the death of the defendants' case. Say what Mr Chaudhuri might, that was the fable with which his clients had started—no resemblance whatever in any respect, and thus the plaintiff stripped bare of all its falsehoods one by one by his evidence, the so-called admission which afterwards came to be made as to points of superficial similarity calculated to deceive, being as insincere as it was unmeritorious.

Mr Chaudhuri wanted to say that he had all along admitted such superficial similarity between the plaintiff and the second Kumar, but according to him, the resemblance did not extend beyond the possession by both of a "fairish complexion" and "brownish hair", if not also of eyes which were "not black", and he was apparently relying on the casual statements of a few of his witnesses mentioning one or more of such common features. This however, certainly fell far short of a case of similarity, superficial or otherwise, such as might tend to deceive anybody, stranger or relation. Neither Mr Chaudhuri nor any of his witnesses would admit a likeness of face or general appearance on any account, and it is difficult in these circumstances to see how mere light complexion or brown hair or light blue eyes, or all of these in combination, might produce any suspicion of resemblance so as to cause one person to be mistaken for the other. None of the witnesses who spoke to these characteristics said in fact that they had been misled thereby into believing that the plaintiff was the second Kumar, but they maintained on the other hand, equally with other witnesses, that the two were wholly unlike each other.

DEFENCE EVIDENCE—A FEW TYPICAL SAMPLES

Thus, to give a typical instance, Jagadish Chandra Chowdhury (Vol 2, pp 72-112), a defence witness examined on commission, who had been a

member of the Bhowal Talukdar and Proja Samity for about two months and then left it, as he says, because he realised that the plaintiff was an impostor (*ibid*, p 73, l 32—p 74, l 21), stated in cross-examination that the first day he met the plaintiff, the only similarity he noticed between his appearance and that of the second Kumar was the fair complexion (*ibid*, p 84, ll 19-37), but was careful to add ' "I particularly marked the face which did not tally at all' (*ibid*, p 85, ll 2-3)

Another commission witness, Sarada Prosanna Ghosh (*Vol 2, pp 272-293*), who admittedly had known the second Kumar very intimately, said nothing about complexion or any other peculiarity, but stated generally that he had noticed no similarity between the features of the second Kumar and those of the plaintiff (*ibid*, p 274, ll 14-16), a statement which he repeated in cross-examination with even greater emphasis, saying "I saw that there was no similarity of features in the least" (*ibid*, p 287, l 23) This is the witness who, as the Wards Deputy Collector, had gone through the "telegram of death" from Darjeeling (*ibid*, p 283, ll 34-35), and had also come to know of the second Kumar's death as soon as Bara Kumar had received the telegram (*ibid*, p 280, ll 33-35), and yet could not check his curiosity to go and see the sadhu who was claiming to be the second Kumar in order to make sure whether he was really so (*ibid*, p 286, ll 2-3),—pretending no doubt that he did so "with a judicial frame of mind" (*ibid*, p 286, ll 6-7), having been "neither convinced nor unconvinced" about the death of the second Kumar! (*ibid*, p 286, l 14)

Some commission witnesses in fact specifically denied any likeness in respect of complexion or hair or eyes Thus, for instance, Atul Prosad Roy Chowdhury (*Vol 3, pp 22-69*), on being asked about the distinguishing features in the appearances of the plaintiff and the second Kumar, gave the points of difference thus

"The hair of the second Kumar was brown and the plaintiff's hair is black Eyes of the second Kumar were fairly large and long-drawn, with a "bluish tint" like that of Europeans, and the plaintiff's eyes are small, roundish and somewhat pale

The complexion of the second Kumar was "reddish" like the Englishmen, and that of the plaintiff is white" (*ibid*, p 28, ll 19-25).

All this, be it noted, was in examination-in-chief

Take another commission witness, Durga Prosad Biswas (*Vol 3, pp 127-158*), who was pointedly asked if he meant to say that there was no resemblance at all in respect of complexion, hair, nose, eyes and other features, and the answer was, there was none they were entirely different, and from all these he came to be definitely certain that the plaintiff was not the second Kumar (*ibid*, p 151, ll 1-7)

It is significant that Bibhabati Devi herself insisted on difference in complexion, her counsel's admission notwithstanding

"Q —If anybody says that the second Kumar's complexion was very fair with slight tinge of red, would that be correct?

A —No

Q —If anybody says that between plaintiff's complexion and the second Kumar's complexion there is not such difference that one cannot mistake the one for the other, would you agree?

A —No " (*Vol 12, p 285, ll 18-24*)

It is worth while noticing in this connection that in her examination-in-chief she gave her husband's complexion as "very fair" "with a yellow tinge" (*ibid*, p 200, ll 3-4), but she improved upon it in re-examination by adding that the colour of his face was "sun-burnt" (*ibid*, p 313, ll 26-28), thus coming into line with plaintiff's expert witness, P W 544, Jamini Prakash Ganguly, the artist and painter, who, describing the plaintiff's complexion, said that it was now "fair, rather sun-burnt, pinkish" (*Vol* 7, p 407, ll 6-7)

Satyendra's attitude in the matter of complexion was no less uncompromising than his sister's. After the conclusion of the evidence of the aforesaid expert, learned counsel for the defendants is said to have made a statement in court regarding the second Kumar's complexion in these terms

"As between the second Kumar and the plaintiff it is very difficult to describe the shade of difference in their complexion. I do not say the difference in their complexion is such as could not possibly deceive people to take the one for the other" (*vide plaintiff's petition dated 8-8-35, Vol* 15, p 243 *see also ibid*, p 247, for defendants' reply)

This statement was directly put to Satyendra in cross-examination, but Satyendra's answer was emphatic "I do not accept this statement" (*Vol* 16, p 449, ll 34-41)

The redoubtable Dr Ashutosh Das Gupta, also always emphatic in his statements, categorically asserted "A glance is enough to show that the complexion of the plaintiff and that of the second Kumar are entirely different" (*Vol* 16, p 332, ll 32-33)

On the question of the colour of the hair, as the learned judge points out (*Vol* 18, p 69, ll 1-11), the defendants made the case at one stage that the Kumar's hair was brown, but that of the plaintiff was black, as will appear, for instance, from the evidence of Atul Prosad Roy Chowdhury already quoted (*Vol* 3, p 28, ll 19-20). The Punjab witnesses who were called to prove that the plaintiff was Mal Singh of Aujla also gave him black hair, e.g., Mohor Singh, who says "His hair was black but not very black" (*Vol* 3, p 376, l 45), Gurdit Singh, who says "His hair was dark, but a few were brown" (*ibid*, p 381, l 1), and Mahna Singh, who says "Attar Singh had black hair and Mal Singh's hair was also black" (*ibid*, p 394, l 1). Lindsay had, however, found the hair "golden rather than red like Atikullah's, as he notes in the margin of his memorandum of the interview with the plaintiff (*Ex* Z(358), *Vol* II, p 313). Lt-Col Pulley, the A D C to the Lt-Governor, began by saying that the plaintiff's hair looked as if it was dark and gone grey like that of an ordinary Indian, but ended by agreeing that it was more like his own hair! (*Vol* 5, p 132, ll 14-27). Then followed the theory, put to Jyotirmoyee Devi in cross-examination, that the hair was originally black, but turned red, "almost golden", through lack of oil and from exposure to the sun! (*Vol* 8, p 356, ll 10-32). Other witnesses coming afterwards no doubt admitted a certain similarity.

. As regards the eyes, having regard to the defendants' case, not that it was consistent throughout, I wonder how the colour of the same could be at all put forward as a point which might cause even a suspicion of sameness.

PHYSICAL RESEMBLANCE

The learned judge has gone fully into the question of these physical characteristics as of all other bodily features, and has in fact left very little to add, and while I unreservedly accept his conclusions, it is sufficient to

state that in my opinion there is nothing in the evidence to support the view that in the matter of physical resemblance the defendants had at any stage any case other than one of "utter dissimilarity" That case, I repeat, they had themselves put as a halter round their necks, and if it should suffocate them to death, they ought to know whom to thank for it It was a lame attempt which Mr Chaudhuri made to get his clients out of a position from which there was really no escape Neither fair complexion, nor brown hair, nor blue eyes can by themselves produce a possible deception, but if there is a certain sameness in general appearance, individual features may doubtless help either to check or to confirm recognition Mr Chaudhuri's suggestion that strangers might be deceived, but not those who had known the Kumar intimately, only lends support to the plaintiff's case that the near relations who said they had recognised the plaintiff could not possibly have made a mistake

In the result I unhesitatingly hold that the plaintiff's evidence of recognition stands wholly unshaken

SITUATION AT JAIDEBPUR ON PLAINTIFF'S RETURN—STRIKING PROOF OF HONEST RECOGNITION

This evidence receives overwhelming corroboration from the course of events which happened at Jaidebpur, following the two visits of the plaintiff which I had occasion to mention earlier in my judgment,—the first being the "*Chait Sankranti* visit" of barely three days in the second week of April, 1921 when he was sent down there from Kasimpur, having been taken to Kasimpur from Buckland Bund on the 5th April to the house of the local zemindar Sarada Prosad Roy Chowdhury, and the next, a much longer visit when he came again on the 30th of that month, in the course of which took place the *Atma-Parichay* or the Declaration of Identity on the 4th May, and the great public meeting on the 15th May The story of these days has been described by the learned judge in graphic detail with reference to all the relevant evidence (*Vol 18, from p 67 onwards*), and should be read in full to appreciate the situation which arose, a situation which I agree could be explained only on the hypothesis of honest recognition by Jyotirmoyee Devi and others, and say what Mr Chaudhuri might, really shattered to pieces the whole edifice which he tried so sedulously to build of a huge conspiracy hatched and perfected by "a few designing persons"

Speaking for myself, I believe the story fully, and am not prepared to say, in spite of Mr Chaudhuri's criticisms, that the learned judge has taken a wrong view of the evidence He has in fact dealt with it so carefully and so exhaustively that I do not feel called upon to do more than express my entire concurrence with him in his conclusions

A series of facts emerge from this evidence, all of which, however, it is not necessary to call attention to as establishing full recognition of the plaintiff as the second Kumar this did not follow in fact until the plaintiff declared his identity for the first time on the 4th May, 1921, confirming by this declaration what had only been a suspicion, strong as it was, in the minds of Jyotirmoyee Devi and other relations,—a suspicion which had doubtless arisen at the very first meeting with the plaintiff at her house on the *Chait Sankranti* visit (*Vol 8, p 295, ll 18-34*), only to be further strengthened when she invited him to a meal the next day (*ibid p 296, l 9—p 298, l 15*), which afterwards led the sister to seek him out at Dacca 11 or 12 days later on his return from Langalbad, and get him for a few

minutes at Saibalini's house there (*ibid*, p 298, ll 22-42), and which, again, made her send for him on the 30th April (*ibid*, p 299, ll 2-12), getting him this time to stay with her in her house and finally reveal himself (*ibid*, p 299, l 11—p 303, l 29)

DEFENCE CRITICISM BASED ON MEMORIAL VERSION

According to Mr Chaudhuri, the account of all these happenings as related by Jyotirmoyee Devi and other witnesses of the plaintiff is all so unnatural as to be unbelievable, and he lays great stress on the discrepancy between this version and the case made in the plaintiff's memorial to the Board (*Ex J*, Vol III, pp 92-120). The story as set forth in paragraphs 10-14 of the memorial, he points out, is that the plaintiff was recognised at Buckland Bund by D W Atul Prosad Roy Chowdhury, who being "convinced" of his identity took him to Kasimpur, treated him there as the second Kumar, and made a public announcement to that effect, that following this declaration, the plaintiff was taken to Jaidebpur by his relations on an estate elephant, was acclaimed there as the Kumar and accepted by the family "with all the warmth and affection for a lost dear and near relation" (*ibid*, p 94), a story which would place the recognition by the relations somewhere about the *Chart Sankranti* visit. There is no reference to the Declaration of Identity of the 4th May.

BUT FACTS ADMITTED IN NEEDHAM'S REPORT

As I have pointed out more than once, it is possible to attach too exaggerated an importance to the memorial, as if it was designed to give a full and detailed account of the plaintiff's case, without any reference to the specific object which the plaintiff's advisers had in view in thus moving the executive authorities. So far as the present matter is concerned, a discussion about the memorial version is really reduced to one of academic interest in view of certain admitted facts, and particularly of a document originating from defence sources, being the report of the Chief Manager Needham to Lindsay of the 5th May, 1921 (*Ex 59*, Vol II, pp 212-213). The outstanding facts which, the memorial notwithstanding, the defendants are unable to deny are that the plaintiff was at Dacca staying on the river-side opposite to Rup Babu's house, was taken from there to Kasimpur at the instance of Sarada Prosad Roy Chowdhury, and after a few days' halt here, was then sent down to Jaidebpur, that he did stop here at Madhabbari, and during his stay at this place, was taken to the house of Jyotirmoyee Devi at Chakkar where he met her and other relations, that he was suspected by them to be the second Kumar on account of the resemblance which showed through the veneer of ashes still covering his face and body, that the plaintiff himself was visibly affected, and particularly on being shown a photograph of the second Kumar, which drew tears from his eyes, that he then left for Dacca without giving any answers to the questions put by the inmates of the house regarding his identity, that after a few days he was again brought to Jyotirmoyee Devi's house by Atul Prosad Roy Chowdhury, that an impression thereafter began gaining ground amongst tenants and outsiders who were visiting him daily in their hundreds that he was none other than the second Kumar, that he declared his *alma-parichay* on the 4th May evening in the presence of a numerous crowd after giving some details of his past, that he then fainted and the people present shouted *bulu-dham* and *jay-dham*; and that all the persons there were convinced about his identity.

The evidence of the plaintiff's witnesses only elaborates the picture thus given in broad outline, which is all to be found in Needham's report, *Ex 59*. The dry light of this document is indeed enough to wither away to destruction the whole crop of falsehoods raised by the defence to defeat the plaintiff's story.

VERSION OF DEFENCE WITNESSES

The defendants' version is given mainly by D W 310, Jogendra Nath Banerjee (*Vol 15, pp 435-539*), D W 117, Mohini Mohan Chakravarty (*Vol 14, pp 379-416*), D W 92, Phani Bhusan Banerjee (*Vol 14, pp 104-288*), D W 365, Dr Ashutosh Das Gupta (*Vol 16, pp 240-346*), and D W Atul Prosad Roy Chowdhury (on commission) (*Vol 3, pp 22-69* see judgment, *Vol 18 p 68, ll 32-40*, and D W 434, *Vol 17, pp 382-383*, as to how this witness avoided coming to depose in court).

Some of the points sought to be made through these witnesses were as follows —

(i) That every body knew that the second Kumar had been dead and burnt to ashes years ago, and that there had never been a rumour that he was living or going about with sannyasis (*Vol 14, p 405, ll 7-10, and Vol 15, p 445, ll 6-9*).

(ii) That the man who was claiming to be the second Kumar looked utterly dissimilar, with brownish eyes, whereas the second Kumar's eyes were blue (*Vol 15, p 451, l 28—p 452, l 23 and p 490, ll 32-36*).

(iii) That at a Tea Party given by Jogendra Nath Banerjee at the Gol-verandah of the Raj Bari on the Bengali New Year's Day, 1st Baisakh, 1328 (14th April, 1921), the plaintiff who was present at the function openly gave out that he was a Naga and had his *ashram* in the Punjab (*Vol 14, p 380, ll 16-24, and Vol 15, p 447, l 34—p 448, l 10*), according to Atul Prosad Roy Chowdhury, the plaintiff had given out his name as Sunder Das even earlier at Kasimpur (*Vol 3, p 23, ll 3-4*).

(iv) That the plaintiff was being taken from place to place merely as a medicine-man, to cure sterility or other female disease, or eye-trouble, though everywhere he was proving his incapacity in this respect, the earliest story being that he was brought over to Kasimpur to perform a *putreshti-jajna* for Sarada Prosad Roy Chowdhury (*Vol 14, p 379, ll 38-39 and p 380, ll 7-11, Vol 15, p 445, ll 24-25 and p 448, ll 12-16, and Vol 3, p 22, ll 29-35*).

(v) That Phani Bhusan Banerjee saw the plaintiff sitting out in Jyotirmoyee's yard like an ordinary sannyasi distributing medicines, and showing himself utterly incapable of talking or even understanding Bengali (*Vol 14, p 134, ll 11-13*).

Curiously enough, none of the defendants' witnesses would admit any first-hand knowledge of the Declaration of Identity. Phani Bhusan Banerjee, it appears, conveniently removed himself to Dacca, returning to Jaidebpur only in the evening (*Vol 14, p 134, ll 16-18*), while Jogendra Nath Banerjee, without attempting any explanation, was content merely with saying "It is false that Mohini Babu and I were present at *atma-parichay*" (*Vol 15, p 449, ll 6-7*). Mohini Mohan Chakravarty could not help making a slight concession. "If so many people had come, we would have gone to find out why so many people were going there" (*Vol 14, p 397, ll 22-23*), but then

he felt no scruple in making the definite suggestion that the "several hundreds of tenants" in Needham's report (*Vol II, p 212, ll 33-34*) was an "exaggeration" (*Vol 14, p 397, ll 18-19*), though according to his own evidence he was the draftsman of that report in collaboration with Jogendra Nath Banerjee (*ibid, p 381, ll 28-30 and p 400, ll 8-10*), and both must have believed the account given in it to be true

Jogendra Nath Banerjee was in fact asked if at the time Needham signed the report, witness believed every statement in it to be false, and the answer was "No, I believed then that the account it contained was true" (*Vol 15, p 457, ll 1-3*), and later, he categorically stated that he believed it to be a fact, as set out in the report, that "all the people who were present at the time were convinced that he was no other than the second Kumar", adding that by "all the people" he included the inmates of the house (*ibid, p 491, ll 15-21*)

SHAMELESS EQUIVOCATION

Mohini Mohan Chakravarty tried to prove himself a little cleverer. He was taken through the report, bit by bit, in examination-in-chief, and indicated the portions which were within his knowledge, or were mere hearsay, or were only his inferences (*Vol 14, p 381, l 30—p 382, l 26*). The information about the Declaration of Identity was said to have been supplied by Budhu and Jabboo or either of them, as witness and Jogendra Nath Banerjee were on their way to Jyotirmoyee Devi's house along with these boys after the *atma-parichay*, Budhu being a son of Jyotirmoyee Devi and Jabboo a son of her sister Indumoyee Devi. It was impossible to get out of this witness a straight answer whether he believed what he had heard,—the clearest indication, to my mind, of the dishonest evidence he was giving. His first statement was "The things that Budhu Babu and Jabboo said during the journey to the house of Budhu, there was no reason to disbelieve at that stage", and then in the same breath he said "We did not believe, of course, that a man who had been cremated could come back", adding, however, "but we believed Budhu as to what had happened"! (*ibid, p 395, ll 19-22*). Then followed a piece of shameless equivocation, in a desperate struggle to avoid an admission that the family could have been under the honest impression that the plaintiff was the second Kumar. "We had no reason then to doubt what Budhu and Jabboo had said", but then, "they might have done that from suspicion alone" "Honestly?"—"Can't say. We thought they might have believed that from suspicion" "Suspicion of what?"—"That he was the real man. *They believed in the suspicion that he was the real man*"! (*ibid, p 395, ll 28-41*). He gradually worked himself up to the view that from the conduct of Jyotirmoyee Devi and her family, although they had not said so, he gathered they had not accepted the plaintiff! (*ibid, p 396, l 32—p 397, l 3*). Later, in a moment of forgetfulness he let it slip out of his mouth that Needham accepted the facts reported to him upon the statements of himself and Jogen Babu (*ibid, p 401 ll 12-13*), and when thereupon followed the natural question, if he believed the facts as he gave them to Needham, he replied, perfectly unabashed "I said without looking at the letter that Mr Needham believed and accepted the facts on the faith of our statements" (*ibid, p 401, ll 16-19*), and then, with supreme disregard for consistency, went on to explain to the court "We told him that as to the facts which we were giving him on report, we did not know whether they were true or false, but they seemed to us to be

impossible This is what we told Mr Needham" (*ibid*, p 401, ll 25-27) This means that though he "did not believe what was not within his knowledge, but thought it impossible", he "still put these down as facts in the letter to the Collector", the explanation for this being ready to hand "There was no time for enquiry"! (*ibid*, p 404, ll 4-8) Finally, he ended by saying that "Jogendra Babu said to Mr Needham on the 5th when the letter to Collector was being sent that it was a mere *fakikari* (fiction)—the second Kumar had been dead and burnt years ago" (*ibid*, p 405, ll 7-9) It is useless to quote further from the evidence of the witness to show the consummate master he was in the art of prevarication

NEEDHAM'S REPORT, THE STRONGEST REFUTATION "REPORT OF A BELIEVER"

Needham's report, whoever might have been the draftsman and whatever the source of the information on which it was based, seems to my mind to be the strongest refutation of the whole of the defendants' case as sought to be developed through the evidence of these lying witnesses Clearly and definitely, as it seems to me, it was not only a report of the doings of people who honestly believed the sadhu to be the second Kumar, but as the learned judge says, it was "the report of a believer" (*Vol 18*, p 93, l 15) There was not a word in it to suggest that those who recognised the sadhu were the victims of a colossal hoax, seeing that the second Kumar had been dead and cremated long ago nor in fact a reference either to the tea party at which the sadhu is alleged to have declared himself a Punjabee and a Naga, or to his having been a mere medicine-man, taken about from place to place in that capacity, though only for ineffective cures of female diseases neither was there the slightest hint about the supposed "utter dissimilarity" in appearance which at once told him off from the second Kumar On the other hand, there was a suggestion for "a sifting enquiry about the sadhu", by which, as Mohini Mohan Chakravarty explained (*Vol 14*, p 403, ll 32-34), was meant an enquiry into the identity of the plaintiff, showing, if anything, the existence of an honest doubt on the point in the minds of those who were responsible for the report

FUTILE ATTEMPT TO BELITTLE THE REPORT

To me it seems to be futile to try and destroy the effect of this document by showing that it merely gave the facts as supplied by two interested persons who, by the way, both happened to be dead The report was going to be sent by the Chief Manager to the Collector of the district, to all intents and purposes an official communication, though in the form of a letter it purported to deal with a grave situation which threatened to imperil the administration of the estate, and it is absurd to suppose that either Jogendra Nath Banerjee or Mohini Mohan Chakravarty, both holding responsible positions under the Manager, the one as Superintendent and the other as Assistant Manager, even if none of them was actually present at the *atma-parichay*, should put into it matters about the authenticity of which they themselves entertained a doubt

There is doubtless the statement in the report that "finding the gravity of the situation, the inmates of the houses of late Sri Indumoyee Devi and Jyotirmoyee Devi informed Mohini Babu and Mr Banerjee that the sadhu

had given out such and such things" (*Vol 11, p 212, l 40—p 213, l 3*), but it does not mean that they made no enquiries on their part as to the truth or otherwise of the story they had heard. The report in fact goes on to state that "they forthwith proceeded to the house of Sri Jyotirmoyee Devi and enquired about the matter" (*ibid, p 213, ll 3-4*). Even if, as the report states, they were unable to meet the sadhu that evening, or the following morning when they called again, that is no reason why they should still unhesitatingly accept the version given to them by Budhu and Jabboo, if they did not believe in it themselves. At any rate, that does not explain why they should not state the facts which were supposed to be within their personal knowledge as going to discredit the whole of the story about the sadhu being the second Kumar. If their present evidence is true, neither of them need in fact have made any further enquiries to convince themselves or convince others that the sadhu was an impostor, for, apart from the fact that, as they say, they had no doubt whatever about the death and cremation of the second Kumar 12 years ago, they must already have heard from the man's own lips at the tea party that he was a Naga, who had his *ashram* in the Punjab, and must also have known him to be a sadhu who was being requisitioned by people, among others by Mohini Mohan Chakravarty himself, only as a medicine-man, and who had not the remotest physical resemblance to the second Kumar.

CONDUCT OF JOGENDRA BANERJEE AND MOHINI CHAKRAVARTY

And yet, as already stated, there is not a whisper about these matters in the report, though Mohini Mohan Chakravarty now says that he and Jogendra Nath Banerjee told Needham on the 4th night that the plaintiff could not possibly be the second Kumar (*Vol 14, p 396, ll 11-12*). Neither is there any indication in it of any remonstrance or expostulation which would have been only natural on their part with the ladies of the house for their attempted introduction of a Punjabee Naga into the intimacies of their family life. It is admitted that Jogendra Nath Banerjee, if not Mohini Mohan Chakravarty, was on speaking terms with Jyotirmoyee Devi, being in fact the elder brother of her son-in-law Sagar *alias* Sati Nath Banerjee, P W 977, and one should have expected him at least to go up to her direct to protest against her outrageous conduct, for so it must have appeared to him, but the evidence is, he did nothing of the kind (*ibid, p 394, ll 10-11*). Be it remembered that Sagar's wife, Promodbala *alias* Mani, was staying at the time with her mother Jyotirmoyee Devi.

Mohini Mohan Chakravarty made a feeble attempt in one part of his evidence to suggest that there was some sort of a protest from Jogendra Nath Banerjee when they went to Jyotirmoyee Devi's house on the 4th evening.

"Q —Did Jogen Babu say then that it was all nonsense—that the Kumar had long been cremated?

A —He said that " (*ibid, p 394, ll 15-17*)

Earlier, however, he had stated

"He (Jogendra) did not say to Budhu and Jabboo 'Are you fellows gone mad? He was reduced to ashes at Darjeeling' " (*ibid, p 393, ll 18-19*)

On the next morning, again, according to this witness, he and his companion were both very anxious to convince the inmates of the house that the plaintiff was not the second Kumar "we did say that morning about the second Kumar's death, cremation and *sradh* and asked—how could he return?" (*ibid*, p 398, ll 28-32) Unfortunately, however, for the witness, Jogendra Nath Banerjee does not support him in these well-meant efforts to carry conviction to the deluded relations, and he could not help involving himself in rather an obvious inconsistency, for it was also his evidence that on the 4th evening he "did not collect that Jyotirmoyee Devi and her family had accepted the sadhu" (*ibid*, p 396, ll 32-33), and even up to the 5th morning they did not understand "the family were very much convinced", so, as he added, "no very great efforts were made to unconvince them" (*ibid*, p 398, ll 33-35)

As I have said before, it is impossible to place any reliance on the evidence of any of these witnesses, and I should certainly prefer to accept the statement of Jyotirmoyee Devi that Jogendra Nath Banerjee, if not Mohini Mohan Chakravarty, was present at the Declaration of Identity, and had in fact been coming to her house very often both before and after (*Vol 8*, p 303, ll 2-3, p 361, ll 1-2 and p 362, ll 7-10), as is also testified by Jogendra Nath Banerjee's brother Sagar (*Vol 11*, p 191, ll 21-23) Both these estate officers, I am satisfied, must have been convinced about the honesty of Jyotirmoyee Devi and the other relations in accepting the plaintiff as the Kumar, and if not equally convinced themselves, must have, at any rate, been troubled with an honest doubt about the identity. It is this in fact which took them to Jyotirmoyee Devi's house on the 4th May and on other days—to "test" their recognition of the sadhu, as Mohini Mohan Chakravarty himself admitted at one stage (*Vol 14*, p 393, ll 8-10), though it is not surprising that the witness tried to go back upon the statement a little later (*ibid*, p 396, ll 6-11) Jogendra Nath Banerjee on his part repudiated the idea of "testing" altogether, suggesting that he went with no definite object, but "just to see what was happening out of curiosity" (*Vol 15*, p 471, l 31—p 472, l 7) This witness, I should have pointed out before, first denied that he had been specially appointed to look after the case on behalf of the defendants (*ibid*, p 474, l 36—p 475, l 2), and persisted in this denial as long as he could (*ibid*, p 484, ll 5-6), but had finally to admit that it was a fact that the Government Pleader had asked for "a special *tadbirkar*", and he had been selected with the duties he indicated (*ibid*, p 485, ll 1-2)

ATMA-PARICHAY NOT A STAGED DEMONSTRATION

Mr Chaudhuri could not deny the fact of *Atma-parichay* altogether, but sought to belittle the incident as much as he could, though it is significant he dared not call a single witness to give his version of the affair, as he might undoubtedly have done, if he wanted to, seeing that hundreds of persons must have been present on the occasion. As it is, the evidence of the Declaration of Identity on the plaintiff's side remains wholly uncontradicted (*Vol 18*, p 93, ll 39-44) It is no use calling attention to small discrepancies in the account given by the plaintiff's witnesses, either as to the exact date or time when the declaration was made, or as to the exact spot where he was then seated, or as to the exact questions or sequence of questions which were asked, or as to the persons who asked them. These discrepancies such as they are, are only strong confirmation of the fact that the witnesses had not

been put up to speak to a tutored story, and I cannot help observing that if Mr Chaudhuri should hope to succeed in his case on the strength of such small points of detail, he must be hoping in vain. After all, as it seems to me, the case will have to be decided on its broad facts, and upon a reasonable view of the evidence as a whole, without unduly fastening upon non-essential details which do not affect its veracity at all. Treating the evidence of the *atma-parichay* in this way, I have no hesitation in holding that the learned judge has come to an absolutely correct finding regarding the matter. "the defendants can no more wipe it out than they can wipe out the sun" (*ibid*, p 91, ll 33-35)

There is in my opinion no warrant whatever for Mr Chaudhuri's suggestion that the *Atma-parichay* was only a demonstration staged on purpose by Jyotirmoyee Devi and the other members of the family after they had finally made up their mind to pass off the plaintiff as the second Kumar, knowing him to be an impostor as they did. The object, it was said, was two-fold,—on the one hand, to overcome the reluctance and diffidence of the plaintiff himself to play the part which they wanted him to play, by assuring him of public support, and secondly, to canvass such support in order that their plans might be carried to a successful issue. It is a pity, however, that none of this case was put to Jyotirmoyee Devi or any of the other witnesses who spoke about this affair. Such a suggestion would in fact contradict and be contradicted by the case made by Mr Chaudhuri himself on other points—his theory of "utter dissimilarity", for instance, as well as his view that the *Atma-parichay* was really a hole and corner affair, apart from the fact that it would postulate a sudden conspiracy on the part of the inmates of the house on the off-chance of being able to carry it through.

TRUE SIGNIFICANCE OF THE EVENT

By declaring himself as the second Kumar whether of his own accord or at the instigation of others, the plaintiff of course does not establish himself as such, nor will the acclamations of a crowd at a public gathering prove the fact of identity. The *Atma-parichay* and the other incidents which happened both before and after, are important from the plaintiff's point of view only as showing the course of events which led up to and followed the recognition and acceptance of the plaintiff by the family. They would doubtless affect the question of *bona-fides* of their recognition, but such *bona-fides* are not attacked by making suggestions for which there is no foundation laid in the evidence. Beginning from the day of the first meeting with the plaintiff at her house during the Chait Sankranti visit, I do not see anything in the conduct of Jyotirmoyee Devi, or, I may add, of any of the other relations, which may be said to have been unnatural or improbable. On the other hand, it was the conduct of people who were suddenly startled into recognition of a long-lost near and dear one, but could hardly yet believe their eyes, the flicker of a hope kindled by rumours from time to time that he might be still living having died down almost to extinction, and who were anxious, therefore, to avoid taking any action in haste which they might have to repent at leisure. It was not the artful manoeuvring, though without the art to conceal it, of a motiveless conspiracy to propound an impostor, but only a resolute struggle to guard against the possibility of being even unwittingly led to accept an impostor. As Jyotirmoyee Devi put it: "Considering our family we wanted to be dead certain so that no question could ever arise in our minds" (Vol 8, p 300, ll 40-42), a very correct representation indeed of the attitude of the whole family towards the plaintiff. There is, I repeat, nothing in the evidence

of their conduct during this period to show that the plaintiff was being slowly won over to play the part of the second Kumar, or that the public mind was being prepared for his acceptance as such

Mr Chaudhuri makes much of the fact that the plaintiff in his own evidence made a confusion regarding the date on which he made the declaration of his identity. In his examination-in-chief he indicated the date as the 1st May, the day following his arrival at Jaidebpur, an examination of the marks on his body being stated to have been made the same morning (*Vol 4, p 106, ll 24-35*), while in cross-examination he said that the marks were seen "1 or 2 days before the Bhowal meeting" (*ibid, p 164, ll 11-13*), two statements, which are doubtless not only inconsistent with each other, but incorrect too, even if the "Bhowal meeting" be taken to refer, not to the big public meeting of the 15th May, but to that at which the declaration of identity was made. This is, however, nothing but honest failure of recollection, which not only does not shake the credit of the plaintiff, but cannot affect the evidence of Jyotirmoyee Devi regarding these happenings,—evidence, which, as already pointed out, receives full corroboration from the only contemporaneous record of the time, the report of Needham leaving no doubt whatever as to the factum or the date of the *Atma-parichay*, or as to the date of the plaintiff's arrival at Jaidebpur

EXAMINATION OF PLAINTIFF'S MARKS

Mr Chaudhuri, again, poured ridicule on Jyotirmoyee Devi's story of the examination of the plaintiff's marks, and their subsequent announcement to the assembled visitors, before the Declaration of Identity (*Vol 8, p 300, ll 28-42, p 301, ll 22-28 and p 352, ll 16-19*), supported as it was by the evidence of the plaintiff himself (*Vol 4, p 106 ll 26-30, and p 164, ll 11-14*) and other witnesses, such as Billoo (Jitendra Chandra Mukherjee), P W 938 (*Vol 10, p 336, ll 11-31, p 337, ll 1-12, p 355, ll 37-38, p 356, ll 36-37 and p 357, ll 1-8*), and Sagar (Sati Nath Banerjee), P W 977 (*Vol 11, p 190, ll 1-11 and ll 24-25, and p 202, l 39—p 203, l 11*). The whole proceeding, he said, was utterly unnatural,—Jyotirmoyee Devi, according to his caricature of the scene, acting as "the tally-clerk of marks", recounting them one after another, and the nephew checking them off, and the suggestion was that they falsely imputed to the second Kumar the marks which they thus found on the plaintiff (*Vol 4, p 164, ll 24-25, Vol 8, p 371, ll 21-23, and Vol 10, p 357, ll 7-8*). If there was genuine recognition on the part of the sister and the family, it was added, such an examination of marks would never have taken place

NEITHER "IMPROBABLE" NOR "UNNATURAL"

It is difficult to follow what Mr Chaudhuri meant—whether he denied the fact that the marks had been seen, or denied that the plaintiff had on him the marks of the second Kumar. The first of these suggestions is negatived by the case which, as the learned judge points out (*Vol 18, p 91, ll 29-33*), he had himself put to Jyotirmoyee Devi (*Vol 8, p 371, ll 21-23*) as also to the plaintiff

"Q—Isn't it a fact that the marks on your person were seen, and it was given out that those were in the second Kumar?" (*Vol 4, p 164, ll 24-25*)

As regards the other, the best answer is supplied by the fact that the plaintiff does show on his person certain distinctive marks which were un-

deniably on the second Kumar, namely, an "irregular scar" over the left outer ankle which is spoken to by the defendants' own medical witnesses Lt-Col Denham White and Major Thomas (*Vol 17, p 154, l 36—p 155, l 2, and p 170, ll 1-5*), and is specifically mentioned as a distinguishing mark of the second Kumar in his insurance proposal (*Ex 230, Vol I, p 175, ll 2-3*), and also a rough and striated skin on the insteps and ankle joints, which appears to have been almost a characteristic feature running through the second Kumar's family, having been present on the feet not only of the second Kumar, but also of Raja Rajendra Narayan Roy, Kripamoyee Devi, the Chota Kumar and Budhu, and being still noticeable in Jyotirmoyee Devi and her daughter Mani. If the existence of these marks is established, there seems to be no reason why the evidence regarding the others should be summarily rejected.

I refuse to believe that all this was an elaborate concoction which Jyotirmoyee Devi solemnly put forward in court, only to give counsel on the other side a chance to denounce the story as on the face of it so utterly "improbable" and "unnatural" as to carry its own condemnation. No one minded to make a false case would unnecessarily lay himself or herself out to such an obvious attack. It is worthy of note that there was not a word of cross-examination from Mr Chaudhuri on this evidence, except only to suggest that the witness was ascribing to the second Kumar the marks she had found on the plaintiff, a suggestion which she had already answered in anticipation in her examination-in-chief (*Vol 8, p 301, ll 29-31*).

With all respect to Mr Chaudhuri, I for one see nothing in Jyotirmoyee Devi's conduct to merit the description learned counsel chooses to apply to it. As she explains, the object of looking for the marks was only to make assurance doubly sure, and far from weakening the evidence of recognition or casting doubt on its genuineness, seems to my mind only to place it on a stronger and more certain basis.

SITUATION RECALLED

What after all was the situation, if one must judge the probabilities? The plaintiff arrived at Jyotirmoyee Devi's house on the evening of the 30th April, the ash-besmeared sadhu she had seen before and whom she had already begun to suspect as her second brother, brought there at her instance by her son and by Atul Prosad Roy Chowdhury, (though the latter falsely denied having had anything to do with it), because she was anxious to resolve the suspicion. She had no talk with him that night, but saw him weeping, which she was told he did on seeing some photos of the Kumars. Next morning he went to the river Chillai for a bath, and returned, ashes all over as before. She was, however, burning with a desire to have a clearer view of the complexion, stripped of this veneer, and accordingly pressed him not to put on the ashes next day. But he would not comply, and her remonstrance was in vain. So the following day she sent a man along with him to the river, and for the first time he came back with the body bared of all disguise. "Then", as she says, "I saw his complexion. It was the second Kumar's complexion as of old, and seemed brighter still on account of *Brahmacharyya*. Then, looking at his face, clean from ashes, he looked like Ramendra himself. I noticed his eye-lids darker than his complexion. I saw the mark left by the carriage wheel on his leg, and I saw the rough and scored skin at the wrists and on the insteps."

There is a ring of sincerity in these words which there is no mistaking. The recognition was complete, not only on her part, but also on the part of other relations and of the neighbours who were present. And yet to remove all uncertainty, she wanted to see the marks on this day, and asked her son to look for them, but the sadhu would not allow it. He had in fact, been all the time protesting that he was "nobody" to them. It was only the next morning that he yielded, and then later in the day, unable to resist himself any longer, finally revealed his identity,—a complete capitulation to the subtle but gathering forces of *Maya* within, which he had striven so hard and so long to withstand (*Vol 8, pp 299-300*)

ATTITUDE OF THE FAMILY

It is futile for Mr Chaudhuri to refer to a statement in Needham's report occurring towards the end, as showing an attitude of hostility on the part of the relations even after the declaration of identity. "The inmates of the house", it is stated there, "threatened the sadhu that he was incurring great responsibility by expressing in words and by conduct that he is the second Kumar and that he cannot leave the place without giving the full particulars about his identity and past history" (*Vol II, p 231, ll 6-10*). This supposed threat to the sadhu after the *atma-parichay* was put to Jyotirmoyee Devi in cross-examination, but she said she had not heard anything about it, and did not know. All that she could say was that there was no question of the plaintiff having wanted to leave after the declaration of identity (*Vol 8, p 382, l 28—p 363, l 8*), a fact also spoken to by Sagar (*Vol 11, p 202, ll 22-23*). On Mohini Mohan Chakravarty's own showing he had incorporated the statement in the report on hearsay "this is what we were told", said he, mentioning Budhu and Jabboo, both dead, as the sources of his information (*Vol 14, p 381, ll 23-26, p 382, ll 23-24 and p 399, ll 15-16*). Phani Bhusan Banerjee repeated the tale, as also on hearsay, though he would not admit that it was in the Needham report (*Vol 14, p 134, ll 23-28 and p 215, ll 38-41*). It is difficult to see in these circumstances how the story could be regarded as proved, but supposing it to have been a fact, it could certainly not be said to indicate that the family had refused to accept the plaintiff. It showed, if anything, only an anxiety on their part to get further particulars from the plaintiff himself in order to confirm the impression he had already created in their mind as to his identity. Mohini Mohan Chakravarty himself admitted that he "did not collect that they were thinking that the plaintiff was an impostor", though he added "they were doubting whether he was the real man or an impostor" (*Vol 14, p 399, ll 17-19*). In no sense thus can the Needham report lend any support to Mr Chaudhuri's view regarding the attitude of the family towards the plaintiff in spite of the *atma-parichay*.

One should not indeed be far wrong in supposing that this particular statement was put in on purpose that the authors of the report might not, if they could help it, have to commit themselves all at once to a definite attitude of hostility to the sadhu (*Vol 18, p 97, ll 22-26*). As Billoo put it "Jogen Babu was actually present at the *atma-parichay*, so that all that I can say is that not knowing what attitude the Court of Wards was going to take, Jogen Babu did not want to commit himself in writing—it is possible that that is why he was taking up a non-committal attitude" (*Vol 10, p 358, ll 6-9*) according to witness, this passage as well as the other one as to the inmates of the house having informed Mohini Babu and Mr Banerjee

about the things given out by the sadhu, was not at all correct (*ibid*, p 343, ll 11-17), which was only a polite way of saying it was false

But perhaps this was not wholly false, but only a half-truth, the half of it which was expressed having for its substratum the fact, deposed to by Jyotirmoyee Devi, that on the morning of the *atma-parichay*, after the examination of the marks, she did insist on the sadhu in firm tones to declare who he was "Your marks and appearance are like those of my second brother You must be he Declare who you are" "No No, I am not", said he, "I am nothing to you, why do you annoy me? I will go away" But she won't take a refusal "Say you must who you are", she pressed in fond remonstrance, backing it up with words which, literally taken, might be regarded as a threat, but were far from it in truth "Ruin seize you, if you do not" (*Vol* 8, p 301, ll 15-21) She threatened she would not take her food until he told her who he was (*ibid*, ll 35-36) It may be that this was misrepresented in the report as a warning to the sadhu of the responsibility he was incurring by his refusal to disclose his antecedents, but the greatest mischief lay in the suggestion which must have been deliberately false that it reflected the attitude of the family after the declaration of identity

NON-COMMITTAL ATTITUDE OF ESTATE OFFICIALS

It was definitely put to Mohini Mohan Chakravarty that he and his friend Jogendra Nath Banerjee had so manipulated Needham as to leave the way open for them to shape their course of action according to the reply that came from the Collector to the report of the 5th May (*Vol* 14 p 407, ll 11-14) The witness of course denied the suggestion, but admitted that when the report was sent up to Dacca, he did not know whether the Collector was going to stand for or against the plaintiff (*ibid*, p 407, ll 6-7), and admitted further that between this report and another which witness made to Needham the next day (*Ex* Z(203), *Vol* 11, p 215), there was a difference of attitude Jogendra Nath Banerjee also could not help saying that "before the 8th May it became generally known that the Court of Wards officers were against the plaintiff, but not up to the 5th May inclusive" (*Vol* 15, p 527, ll 23-25) To like effect was the evidence of another defence witness, P W 391, Prafulla Kumar Chaudhuri, who was an employee of the estate at the time (*Vol* 17, p 81, ll 9-14)

FALSE CASE MADE BY DEFENDANTS

All the indications, in my opinion, tend to confirm the intrinsic truth of the plaintiff's story of these stirring days, culminating in the Declaration of Identity, and one has only to contrast it with the manifestly false case made by the defendants through other witnesses as well, besides Jogendra Nath Banerjee and Mohini Mohan Chakravarty, such as D W 76, Tasaraddi Mandal (*Vol* 13, pp 282-294), D W 108, Umesh Chandra De Sarcar (*Vol* 14, pp 344-346) and D W 377, Harnath Das (*Vol* 16, pp 408-414), not to mention D W 92, Phani Bhusan Banerjee (*Vol* 14, pp 104-228),—a case, vividly, but none the less without the slightest exaggeration, thus set out by the learned judge in words which I find it difficult to improve upon —

"On the defendants' case, then, the sannyasi on the Buckland Bund was being taken from place to place as a medicine-man, to Kasimpur, to Saibalini's house, to Jaidebpur, suspected by nobody as the Kumar,

coming for the second time to treat somebody, staying at the house of Jyotirmoyee Devi out in the yard, seen by people calling for medicines, until on the fourth day—the 4th May—this sannyasi, a Punjabee, talking an unintelligible jargon, looking utterly different from the Kumar, suddenly declared, or was made to declare, or represented as having declared, that he was the Kumar,—without knowing whether the Kumar was tall or short, fair or dark, young or old, married or single, if it was his own act—or if it was not his own, the family put him up, despite the widow, despite his absolute illiteracy, despite his tongue, and despite his utter dissimilarity in looks, despite his complete ignorance of the role he was to play, and then placed him in the open to be seen by all comers, in the heart of Jaidebpur, and sent him to interview the Collector of Dacca, and made up their mind to fight the Court of Wards, and against an estate whose rent-roll is something like ten lakhs of rupees” (*Vol 18, p 87, ll 12-18*)

COUNSEL’S TAUNT AT THE JUDGE—“DACCА SHAKESPEARE”

To Mr Chaudhuri, no doubt, this was nothing but the “Dacca Shakespeare” talking, as in his abundant charity he was pleased to characterise the learned judge, but it was far easier for counsel, a Bengalee as he was, to carp at the language of a fellow-Bengalee than to assail the truth of his facts or the force of his logic. Be it said, however, to the credit of the “Dacca Shakespeare” that whatever his English might have been, it was better than the bad language and worse manners of his critic at the Bar, who thought it fit to speak of the judge as “floating by the skirts of Jyotirmoyee”, when all else sank into the “morass”, parodying with vulgar wit an observation of the judge himself,—“the rocks in this apparent morass”, as he described the “incontrovertible” facts in the whole mass of evidence on either side going to prove or disprove the identity (*Vol 18, p 157, ll 16-18*)

Apart from Needham’s report, there is also the letter which, it will be remembered, Dr Ashutosh Das Gupta wrote to the Bara Ram’s brother Sailendra Nath Motilal from Jaidebpur on the 5th May, reporting “a very wonderful incident” said to have happened there, the like of which was not recorded even in fiction (*Ex 398, Vol II, p 214*). All Jaidebpur, he writes, was firmly convinced that the sannyasi who had come to Budhu Babu’s house was the second Kumar himself, and men were coming in their thousands daily to see him. He (Dr Ashutosh) was passing his days in mortal fear, as countless people were accusing him of “having come and told a lie”, which Mr Chaudhuri was inclined to agree meant that he was charged with having made a false report about the second Kumar on his return from Darjeeling.

The contemporaneous police registers also bear testimony to the “tremendous sensation” which prevailed both before and after the *atma-parichay* (*Exs 231 series and 258 series, Vol II, pp 201-211*, proved by Police Sub-Inspectors Md Nurul Amin, P W 995, *Vol 11, p 443*, and P W 1028, Abdul Hakim, *Vol 12, pp 43-48*)

DEFINITE CHANGE OF ATTITUDE OF COURT OF WARDS OFFICIALS FROM AFTER 5TH MAY

The events which followed the Declaration of Identity, as fully noticed by the learned judge, were only consistent with an honest belief that the plaintiff was the second Kumar, except that from after the 5th May, as

practically admitted by Jogendra Nath Banerjee and Mohini Mohan Chakravarty, the attitude of the Court of Wards officials including these two witnesses underwent a definite change, the first indication of which in fact was visible in the Assistant Manager's report to Needham of the 6th May (*Ex Z(203)*, *Vol II*, p 215). All the studied reserve of the report of the previous day (*Ex 59*) was now thrown away—the sadhu was stated to be “posing falsely” as the second Kumar, and refusing to answer questions “concerning his previous history”, except only to give the names of his father and elder brother—this “refusal to reply” was characterised as “very significant”, and a prosecution for “false personification” was actually suggested.

MOHINI CHAKRAVARTY'S REPORT OF 6TH MAY

Not a word of explanation, however, in this report, apart from the supposed refusal to reply, as to what might have happened during the last 24 hours to have produced this sudden conviction that the sadhu was nothing but an impostor—not a suggestion that he was looking “utterly dissimilar” to the second Kumar—not a hint, that he was not speaking or could not speak Bengali—none either that the family was still refusing to accept him—no indication even of the questions supposed to have been put to him which he declined to answer.

If the other report only misrepresented the attitude of the family, this, I have no hesitation in holding, was *suppressio veri* and *suggestio falsi* almost from beginning to end, and not the slightest credence can be attached to it. It was a report which, as the learned judge finds, was framed to fit the attitude of the Court of Wards on the 6th May (*Vol 18*, p 97, ll 27-29 and p 103, ll 8-9), and on his own showing, Mohini Mohan Chakravarty was a man whose loyalty to his employers was much too deep to permit him to express his honest belief, if it did not happen to coincide with their views.

“Q—Would you say that you consider it your duty not to give out your honest belief on a matter simply because it did not coincide with the view of those who are above you?”

A—I would not disclose my honest belief in these circumstances” (*Vol 14*, p 387, ll 34-37)

Right through from now onwards, the defendants sedulously sought to make the case, the plaintiff was refusing to answer any questions about his past life, either the relatives who surrounded him intervening to stop the questioners, or the plaintiff himself putting them off, sometimes with a sob, and sometimes with the remark that he would make his reply at the proper time (see, for instance, Mohini Mohan Chakravarty, *Vol 14*, p 383, ll 11-15, Jogendra Nath Banerjee, in identical terms, *Vol 15*, p 449, ll 36-39 and p 450, ll 16-26, Phani Bhusan Banerjee, *Vol 14*, p 135, ll 17-20, and Kiron Chandra Sen Gupta, D W 25, *Vol 12*, p 490, ll 27-33 and p 491, ll 1-4). Apparently, however, the plaintiff proved himself sufficiently obliging to the defendants to give out the details for the concoction of Rai Bahadur Sasanka Coomlar Ghose's very useful “story of the sadhu”!

All I need say is that in concurrence with the learned judge, I refuse to believe the evidence of the defence witnesses referred to above. One wonders indeed if the little detail of sobbing as a device to avoid answers, or of relatives trying to smother the questioners might not have owed its

inception to an idea that it could be turned as effectively against the plaintiff in this case as it had been against Arthur Orton in the Tichborne trial

EVIDENCE OF HARENDRA KUMAR GHOSE

Mr Chaudhuri makes a good deal of the evidence of a very respectable witness on the plaintiff's side, P W 896, Harendra Kumar Ghose, a retired Deputy Magistrate (*Vol 10, pp 89-94*), who says that on a certain date before the 15th May, the day on which the big meeting was held, he had been to Budhu Babu's house to see the sadhu there, and that he put him some questions on this occasion to convince himself of his identity with the second Kumar. He asked him to say by what name he would call his wife, and also to name the best-known sweetmeat of Dacca, but the sadhu would not answer, saying that he would tell it all when the time arrived (*ibid, p 91, l 29—p 92, l 3*). This, says learned counsel, is corroboration of the defence evidence, but in the first place, it will be seen that the witness was unable to fix the date of his visit to Budhu Babu's house more precisely than by saying it was "on a day between the 30th April and the 15th May" (*ibid, p 93, ll 25-26*). Secondly, there was no suggestion by him of any attempt by the inmates of the house to intervene for the protection of the plaintiff, thirdly, he was referring to one particular occasion only, from which one could not certainly infer a general attitude of refusal on the part of the plaintiff to submit to any test. And above all, if, as Mr Chaudhuri concedes, no doubt for his own purposes, the witness was a witness of truth, there was not only the fact of his himself having seen a distinct similarity between the sadhu's face and that of the second Kumar (*ibid, p 91, ll 13-14*), but his definite statement as to Phani Bhusan Banerjee having expressed to him the opinion that from his conduct and deportment the sadhu appeared to be the second Kumar (*ibid, p 91, ll 1-3*).

"BIRD-SHOOTING" EPISODE

The denial of the defendants' witnesses notwithstanding, I hold that the "bird-shooting" episode referred to by the learned judge did take place on the 5th May afternoon, as found by him (*Vol 18, p 102, ll 13-15*), this being in a sense the first demonstration to have been held to test the plaintiff's memory, a test which he passed quite as successfully as the very last one he was put through by learned counsel in the witness box. This particular incident about "bird-shooting" had been spoken to by Abdul Hakim, P W 1028, (*Vol 12, pp 43-48*) in the Defamation case itself, in which he was a witness for the prosecution, the evidence having been given in cross-examination (*Ex 259, Vol II, pp 373-374*). The plaintiff called him to prove the incident over again in the present case, but as he pretended to forget the details, the plaintiff was permitted to cross-examine the witness, and it was elicited from him that what he had stated in his previous deposition were facts (*Vol 12, p 49, ll 24-25 and p 46, ll 14-15*). Convincing testimony as to what actually took place on the occasion was, however, given by another witness for the plaintiff, P W 853, Gouranga Chandra Kavya-tirtha (*Vol 9, pp 498-502*), who was Sub-Registrar at Jaidebpur at the time and is in fact named in Mohini Mohan Chakravarty's report as having been present at the interview with the plaintiff on the 5th May afternoon. According to him, Ashu doctor wanted to put, and put the test question: could the plaintiff say who had shot a

bird on the cornice of the verandah at Darjeeling? Before the sadhu gave his answer, Ashu doctor whispered to witness the name "Biren Banerjee." The sadhu afterwards gave the name as "Hari Singh." Ashu doctor protested that Hari Singh was not at Darjeeling at all. Biren Banerjee was thereupon called, and he confirmed the sadhu, adding that Biren did not know how to handle a gun. Biren Banerjee, D W 290, no doubt denies the story in his evidence (*Vol 15, p 326, ll 1-3*), neither any bird having been shot at Darjeeling, nor any test question about bird-shooting having been put to the plaintiff, but he is such an utterly discredited witness that his denial is of no value. It is worth pointing out that Anthony Morel confirms the fact that Biren did not know how to shoot (*Vol 2, p 391, l 17*). As for Hari Singh, he was admittedly one of the Gurkha guards who had gone with the Kumar to Darjeeling (*Vol 18, p 47, l 4*).

CONCLUSION ON DIRECT EVIDENCE OF IDENTITY

As bearing on the direct evidence in support of identity, I do not consider it necessary to go into the further story of the incidents and events which happened from day to day following the *atma-parichay*, and content myself with expressing my general acceptance of the conclusions of the learned judge who has in fact dealt with the matter in the fullest detail. This direct evidence on the plaintiff's side is in my judgment as satisfactory and convincing as it is possible for such evidence to be in proof of identity, and as already pointed out, the learned judge might well have rested his ultimate conclusions on this alone, but this is far from what he has done.

BODILY FEATURES AND PHYSICAL MARKS

Having dealt with the evidence of recognition, he next turns to an examination and comparison of the bodily features and physical marks, discussing the subject in all its aspects with a thoroughness which indeed leaves nothing to be desired. All the available materials which might help towards a conclusion have been sifted, analysed and reviewed with the utmost care and fairness, giving the fullest consideration to all possible criticisms, and without attaching to any piece of evidence an exaggerated value or importance.

MR CHAUDHURI'S OBSESSIONS

Mr Chaudhuri, as usual, has belaboured the learned judge to his utmost satisfaction for the way in which he has dealt with this part of the evidence, learned counsel's thesis obviously being that every form and variety of proof that the plaintiff has offered for the purpose falls short of establishing identity as a fact. Listening to his long and elaborate arguments, I often wondered what was the nature of the evidence which would have satisfied Mr Chaudhuri on the question of identity, or whether he thought that where the question was raised after many years of absence, identity was by reason of that very fact really incapable of being proved in a court of law. So deeply obsessed was he with his own notions as to the inherent infirmity of the plaintiff's evidence that he seemed to forget that the evidence of identity falling under its different heads had a cumulative significance, apart from

the value, positive or negative, attributable to each such head taken by itself. Another obsession, equally strong, which took complete possession of his mind, and if I may say so with respect, almost threw it off its gear, was the idea, bordering very nearly on conviction, that the learned judge had somehow or other led himself to believe that the plaintiff was the second Kumar, and was accordingly determined to find identity at all costs, irrespective of the evidence, which, according to learned counsel, he, therefore, felt no scruples in twisting and torturing to suit his pre-conceived theories. As I have said more than once before, there could be no grosser perversion of the learned judge's attitude, as a perusal of the judgment will at once convince any one who approaches the task with a mind free from prejudices and pre-possessions himself.

JUDGE'S METHOD OF TREATMENT

Mr Chaudhuri's criticisms notwithstanding, I have been unable to find a single instance in which the learned judge, in his treatment of the present topic, has mis-represented or mis-applied the evidence, or failed to notice any facts or points, however trivial or insignificant, which might be supposed to tell in favour of the defendants. He has indeed dealt with the matter so fully and fairly that I do not propose to do more than record my unhesitating concurrence with him on all points. In my opinion, he has taken a correct and a common-sense view of the entire evidence on either side, oral, documentary and material, checking and testing it at every step to guard against the possibility of a hasty or wrong conclusion. He has tried to reconstruct the body of the second Kumar, as far as such reconstruction is possible, from extant photographs, from recorded details in documents and from his clothes and shoes as well as from the present recollections of persons who knew the Kumar, and then matched the picture with that of the plaintiff as presented in the evidence and as seen in court by himself, forming his opinion not from any single feature or features, but from the whole collocation of them.

EVIDENCE OF PHOTOGRAPHS

The learned judge first takes up the points on which photographs throw no light, such as age, height, figure, complexion, colour of hair, moustache and eye-brows, and colour of the eyes (*Vol 18, pp 190-211*), and then turns to the features which can be compared with the help of the photographs, aided by the opinions of experts who have read them, there being 8 different exposures of the second Kumar, and 16 of the plaintiff (*ibid, pp 211-228*). In dealing with the photographs and the expert evidence, as Mr Chaudhuri himself conceded, he is scrupulously careful not to lose sight of the considerations which may be supposed to affect the reliability of this kind of evidence (*ibid, pp 214-216*). A photograph, as he says, is not a map, and he agrees with the defendants' expert Percy Brown, D W 8, that measuring photographs is useless for comparison, and worse than useless, if they are in different scales or at different angles. You must go by the eye, meaning thereby no doubt the eye of the trained artist (*Vol 12, p 323, ll 17-19, p 324, ll 22-24 and p 326, ll 16-21*), but as the learned judge rightly observes, what a trained eye sees, an untrained eye can also see, if pointed out (*Vol 18, p 221, ll 17-21*). To ensure absolute fairness of comparison, he looks to both differences and

similarities in the photographs, as according to Percy Brown it is only proper to do (*Vol 12, p 321, ll 23-24*), and is careful to point out which of the features can be definitely regarded as marks of identity, which of them, again, are so in a negative sense in that there is no proved difference, and where there is a difference, whether it is such as may be said to destroy identity. The photographs, he finds, while establishing similarity on several points, in fact prove no difference in feature, except only as regards the nose (*Vol 18, p 224, l 2, p 228, ll 1-2 and p 250, ll 33-34*), and on the evidence he is not prepared to hold that this apparent dissimilarity shows a really different nose, so long as it is explicable by the growth of what is called a node, a bony formation which might have been caused by syphilis from which the second Kumar had admittedly suffered (*ibid, p 228, ll 4-24, p 238, ll 17-29 and p 240, l 35—p 243, l 6*)

MARKS

The learned judge next addresses himself to the question of the marks on the plaintiff's body to see how far they may be regarded as evidence of identity (*ibid, pp 228-248*), the most important of these, as I have indicated before, being the irregular scar over the left outer ankle and the scaly feet, not resting on the credibility of any witness

A list of these marks will be found in the notes of an agreed medical examination of the plaintiff which was held on the 14th January, 1936, by three doctors, two appointed by the defendants, Lt-Col Denham White, D W 401 (*Vol 17, pp 152-167*) and Major Thomas, D W 9 (*l o' 12, pp 336-376*), and one appointed by the plaintiff, Lt-Col K K Chatterjee, P W 1039 (*Vol 17, pp 174-206*). These notes were put in and accepted by both parties as if they were evidence given by the doctors in court, the notes signed by the defendants' doctors (*Ex Z(332 (a), Vol III, pp 340-342*) being prepared from pencil notes taken down by Major Thomas to Lt-Col Denham White's dictation (*Ex Z(332), Vol 17, pp 167-171*), while those of Lt-Col Chatterjee (*Ex 407, Vol III, pp 336-339*), also taken down from Lt-Col Denham White's dictation, included his own observations made then and there. The procedure which was followed by the doctors in conducting the examination and making their notes has been correctly described by the learned judge (*Vol 18, p 227, l 6—p 238, l 15*), and this, by the way, ought to be enough to dispose of any charge of unfairness such as Mr Chaudhuri thought it fit to bring against Lt-Col Chatterjee

NO SUGGESTION OF "MANUFACTURED" MARKS

It is not necessary to refer in detail to the learned judge's discussion of these various marks, or to emphasise the discriminating judgment and scrupulous fairness which he shows in dealing with them. One or two general observations will suffice. In my opinion, there can hardly be any doubt that these marks, at any rate the majority of them, had been seen by Jyotirmoyee Devi in 1921 about the time of the Declaration of Identity, as deposed to by her (*Vol 8, pp 284-285, pp 300-301 and p 352*). It was in fact Mr Chaudhuri's own case as put to this witness as well as to the plaintiff himself that these marks were on him at the time, only that counsel suggested that they were being falsely imputed to the second Kumar (*Vol 4,*

p 164, ll 24-25, and Vol 8, p 371, ll 21-23) As the learned judge points out, it was never the defendants' case that any of the marks had been manufactured (Vol 18, p 320, ll 14-15) It is worth observing that Satvendra Nath Banerjee himself, though he did not consider the question of marks to be of any importance (Vol 16, p 443, ll 17-18 and p 444, ll 1-3), but still airily made the suggestion that scars might be manufactured (*ibid*, p 444, l 7), was ultimately obliged to make the admission in so many words that the marks on the plaintiff were not "fabricated" as the second Kumar's (*ibid*, p 444, ll 37-38 and p 445, ll 4-6) Mr Chaudhuri in his opening accepted the same position, though in his reply he made a half-hearted attempt to go back upon it A suggestion that marks were manufactured would of course carry with it the implication that these were actually present on the body of the second Kumar

DEFENCE DENIAL OF MARKS ON SECOND KUMAR

The only important question to consider in fact would be whether or not the second Kumar bore any of these marks on his person The plaintiff's case from the beginning has been that he did, as is spoken to by the plaintiff himself (Vol 4, pp 97-98), by Jyotirmoyee Devi (Vol 6, p 281-285, p 300, ll 30-34 and p 352, ll 16-19) and a host of other witnesses on his behalf, but it is significant that none of the defence witnesses deposed that the second Kumar had these or any other distinctive marks on his body

"IRREGULAR SCAR" OVER LEFT OUTER ANKLE

Even as regards the irregular scar over the left outer ankle, which according to the plaintiff had been caused by a carriage wheel accident, and was specifically mentioned as an identifying mark in the second Kumar's medical report in connection with the life insurance proposal (Ex 230, Vol 1, p 175, item 4), the defendants persisted in making the case that there was no such mark, though they must have had an opportunity of seeing this report as early as the 14th July, 1921, when at the instance of Satyendra, the Board of Revenue had the document brought before them from the Insurance Company along with other insurance papers (Ex 450, Vol 1, p 190) They were probably hoping that the report would never see the light of day, but it so happened that the plaintiff called for it on the 24th November, 1934, and had it produced from the Company's Head Office in Glasgow on the 15th December following, when of course the existence of the mark could no longer be denied As late as the 3rd September, 1934, however, in answer to a complaint by the plaintiff that defendants' counsel was refusing to make a statement as to whether the second Kumar had a mark on the top of his ankle (Vol 9, p 497), they actually put in a petition stating it as their case that the second Kumar had no carriage accident, and further that he had not the mark which the plaintiff had shown on his ankle! (Vol 10, p 60)

Long before the existence of the medical report was known to the plaintiff, quite a number of witnesses on his side had, on the other hand, spoken to the fact that the second Kumar had been limping on crutches at about the time of Chota Kumar's wedding when the carriage accident is said to have taken place Quite characteristically, no doubt, Mr Chaudhuri suggested before us that the plaintiff's advisers must have seen a copy of

the insurance paper in the Calcutta office of the Company, and then called for the original from Scotland, but there was not the shadow of a justification for such a suggestion, and he had not in fact dared put it to any of the plaintiff's witnesses, far less to the plaintiff himself or to Jyotirmoyee Devi, according to him the *de facto* plaintiff in the case. In any event, this would not explain the wholesale denial of any mark on the second Kumar by Mr Chaudhuri's own witnesses before the arrival of the medical report

LAME ATTEMPT TO SUSTAIN INSURANCE MARK

After the document was produced, as the learned judge points out (*Vol 18, p 233, ll 15-19*), Bibhabati Devi was the only witness for the defence who came to speak about a mark on the second Kumar's body—she had noticed only one—what looked like a cut-mark on his left leg above the ankle joint on the outer aspect which was slightly whiter than his complexion and slightly raised above the skin, and was more than 1 inch and less than 1½ inches in length (*Vol 12, p 211, l 35—p 212, l 6*), but this was a very lame attempt to sustain the insurance mark, in denial of the case expressly made on behalf of the defence

MEDICAL EXAMINATION OF PLAINTIFF

While the defendants would thus not admit the existence of any marks on the second Kumar, it is still remarkable how from the beginning they were insisting on an examination of the plaintiff's marks by a doctor on their behalf, the first application for the purpose being made on the day they opened their case, the 6th February, 1935 (*Vol 12, p 78*). Repeated applications in this behalf followed after this from time to time, and it was not until the 7th January, 1936, that an agreed order was made subject to certain terms and conditions set out therein. The attitude which the plaintiff took up in the matter was quite proper and intelligible—as he explained in his petition of the 8th August, 1935 (*Vol 15, pp 245-246*), he was not unwilling to submit to the proposed examination, but objected to its being held until after the defendants had examined all their witnesses who might be supposed from their intimate acquaintance with the second Kumar to be competent to speak about his marks—quite frankly, he did not want to give them a chance of concocting evidence against him through such witnesses. At a later stage, on the defendants renewing their prayer, apparently after the close of such evidence on their behalf, the plaintiff by his petition of the 6th January, 1936 (*Vol 17, p 75*) called attention to the fact that none of the defence witnesses had deposed to the existence of any marks on the second Kumar, and on that ground opposed the making of any order for medical examination. What followed is set out in order No 1353 of this date (*not printed*), as recorded by the learned judge. Rai Bahadur Sasanka Coomarr Ghose for the defendants verbally stated his clients' case: *the Kumar did not have the marks alleged by the plaintiff*, but in the unlikely event of the court coming to a different finding, they were entitled to show that the marks could not have originated in the way stated! He claimed further that the defendants were entitled to show by an examination of the marks that the plaintiff had not spoken the truth. One knows that it does not offend against the rules of pleading to raise inconsistent pleas, but where, as here, the issue is a plain one of fact, marks or no marks, and a clear-cut case

is deliberately made that there are none, one wonders how a party making such a case can in the same breath be heard to say that the marks may have been there, but cannot have been caused in the manner alleged by the other side. It is not as if the defendants took up the position that the second Kumar had certain marks on his body, but that they were not the marks alleged by the plaintiff.

I am not at all surprised that upon this statement of Rai Bahadur Sasanka Coomar Ghose, Mr Chatterjee on behalf of the plaintiff said that he would advise his client not to submit to any medical examination at the instance of the defendants, adding, however, that he would do so, if the court thought it necessary. On the following day, it appears, the parties came to an agreement, and as already stated, a consent order was made. This order has not been printed, and it might be just as well to set it out —

“Order No 1356, dated 7-1-36

Learned counsel for the plaintiff and learned counsel for the defendants Nos 1, 3 and 4 agree that the plaintiff might be examined by a doctor on the date they will fix by agreement with a view to his examination in court as a witness for the defendants Nos 1, 3 and 4 on the points mentioned in the defendants' petition filed on 23-3-35 (*Vol 12, p 331*), and one other point, namely, the alleged node on the shin-bones deposed to by a witness for the plaintiff. It is agreed that the marks on the insurance paper will be examined, and these are the vaccination marks and an irregular scar on top of the left outer ankle as described by words to that effect on the paper.

The plaintiff will be at liberty to have another doctor in attendance at the time of such examination which will be limited by the purposes of the petition, dated 23-3-35, and supposing the two doctors differ in their observations or in their theories, both doctors will be examined, if tendered. Each doctor will be at liberty to have an assistant present, if he so chooses. As agreed, either party may have a lawyer in attendance, but the plaintiff will be entitled to object to their presence during examination of his private parts.”

It was in pursuance of this arrangement that the joint medical examination took place, the marks being pointed out to the doctors by the plaintiff himself.

GENERAL CHARACTERISTICS

Apart from the bodily features and marks, the learned judge considers certain general characteristics, such as gait, expression of the face and voice, as tests of identity, which they undoubtedly are (*Vol 18, pp 248-250*), and in addition to this, he calls attention to the fact that the shoes fit, and so also do the old clothes of the second Kumar (*ibid, pp 193-194*).

It will be thus seen that in dealing with the question of physical identity, the learned judge has not left unexplored a single point of detail appearing in the evidence which might throw any light on the matter in dispute, and in the result, he has in my opinion arrived at a conclusion which cannot but be regarded as absolutely fair and proper. I need only draw attention to his admirable summing up of this chapter of the case, in the course of which he has very conveniently set out the points of similarity in respect of the marks and bodily features in the form of a table (*ibid, pp 250-252*).

Mr Chaudhuri ridicules the learned judge because he says later on that the identity of the body has been "proved to demonstration", and "with mathematical certainty" (*ibid*, p 423, ll 37-38), but it only means, as he explains by reference to the bodily features, all exceptional, and by the bodily marks, all exceptional, which rest on nobody's credibility, that these in their totality can never occur in a second individual and "if the chance of each of the items occurring in a second individual is represented by a fraction, the chance of all these occurring in another is the product of these fractions, and any one with a sense of mathematical odds would see that it is nil" (*ibid*, p 251, l 36—p 252, l 3)

"MATHEMATICAL CERTAINTY"

Whether or not the learned judge was right in imputing "mathematical certainty" to the plaintiff's proof of physical identity, it is somewhat remarkable that the defendants, though they were not content merely with saying that the plaintiff was not the second Kumar, but made the definite case that he was a Punjabee peasant of the name of Mal Singh of Aujla who afterwards assumed the name of Sunder Das when he became a sannyasi, did not yet attempt through any of their Punjab witnesses, Mohar Singh and others (*Vol 3, pp 374-421*), or through their Bawa Dharam Das (*D W 327, Vol 16, pp 51-58*), to show that this man had any of the marks which were admittedly to be found on the plaintiff's body, far less to prove how they might have been caused on the other hand, the fact remains that most of these witnesses who were asked about it very significantly pleaded their ignorance of any such marks. Thus, Mohar Singh said "I cannot tell any mark of identification of Mal Singh's body" (*Vol 3, p 376, ll 43-44*) so did Ujagar Singh "I cannot say any distinctive mark on Mal Singh's body" (*ibid*, p 387, l 40) Mahana Singh "I cannot tell any mark of identification except that Sunder Das is tattooed on his left arm" (*ibid*, p 396, ll 36-37) Wasan Singh "I cannot give any distinctive mark on Mal Singh's body" (*ibid*, p 403, ll 22-23) and Wazir Singh "Mal Singh was Nanga (naked) then and besmeared with ashes I cannot give any distinctive mark on the body of Mal Singh, but Mal Singh showed me his left arm and told me that there was Sunder Das and Dharam Das written there", which, by the way, was wrong, as the tattoo-mark did not contain the name Sunder Das at all (*ibid*, p 413, ll 34-37) What a pity these witnesses should thus deprive Mr Chaudhuri's clients of the chance of proving the defence case to "mathematical demonstration"!

Before quitting the subject of physical identity, one cannot help observing that by the defendants' own token as applied by them to establish the supposed identity of the plaintiff with Mal Singh of Aujla, the plaintiff should win hands down, if one might use this non-forensic expression

MIND OF THE PLAINTIFF

It remains now to consider the last, but none the less a most important, chapter on the question of identity—the mind of the plaintiff, a topic which Mr Chaudhuri complains the learned judge has relegated to a secondary position, though there could be nothing further from the truth. The complaint is apparently based on a certain remark occurring in the judgment to the effect that "the question of identity is primarily a question of the identity of the body" (*Vol 18, p 126, ll 4-5*), but as the context shows, this is just the opposite of what the learned judge indicates to be his own view

He says quite plainly that one may identify a dead man or a mad man, which is no doubt done only from physical features, but where a question as to identity has arisen and the evidence about bodily features is conflicting, one would look to the mind as a determining test, the mind being "as individual as the body", and "impossible to confound with another, if sufficiently searched" (*ibid*, p 126, ll 5-8) Where, however, as in the present case, he adds, rightly or wrongly, the mind is "deliberately left unexplored", the body necessarily "becomes the principal consideration" (*ibid*, p 126, ll 8-11) This certainly does not show that the learned judge on his part was anxious to turn away from an examination of the mind, or that he was not fully alive to the importance of investigating the complex group of facts going to make up what might be called mental identity On the other hand, he almost makes it a grievance himself that learned counsel for the defendants would not follow up this particular line of enquiry for his own purposes And yet it is obvious, if the plaintiff was an impostor, it should have been far easier for the defence to expose the dissimilarity in mind than for the plaintiff to establish similarity in that respect

TEST OF MENTAL IDENTITY HOW TO BE APPLIED

There can be no doubt that for a proper application of the test of mental identity, the first essential would be to get a correct picture of the personality of the second Kumar as he was,—to make sure about the facts of his life, his education, his environments, his style of living, his habits and pursuits, in fact about all that might be said to make the sum and substance of the individual man, for, it is against these that would have to be set the knowledge and recollections of the plaintiff to see how far they were genuinely those of the person he represented himself to be Identity could no more be established by depressing the second Kumar below his true level than it could be defeated by raising him any higher in either case, this would mean the setting up of an imaginary standard for comparison which could not possibly be a guide to a right conclusion

Once the standard was correctly set, and the Kumar re-created in the image of the man he was, the next question would be one of judging the answers given by the plaintiff in the witness box in a fair and proper way,—neither requiring too much proof on the one hand, nor being satisfied with too little on the other, as Lord Chief Justice Cockburn cautioned the jury in the Tichborne trial The object should be to ascertain whether and to what extent the answers represented his real unaided memory or knowledge,—the test to be applied being what is it that the second Kumar, if living now, might be expected to remember, making allowance for the imperfections of human memory, and not trying to test the memory of one by the standard of another? and how far, again, are his recollections to be discounted by the fact that he had sources of information at hand from which he might have derived all the knowledge which he exhibited?

I am unable to hold that in dealing with the question of mental identity, the learned judge permitted himself to lose sight of any of the considerations I have indicated If he did not yet find it possible to come to a conclusion favourable to Mr Chaudhuri's clients, it was not because of any failure on his part either to appreciate or to apply the right principles in this branch of the investigation, but because the facts and circumstances of the case refused to yield such a result Neither as regards his portrayal of the real Kumar as he was in life, nor as regards his findings as to the knowledge

displayed by the plaintiff of the facts of the Kumar's life, am I prepared to say that the learned judge took an "impossible" or incorrect view of the evidence on record

IMAGINARY KUMAR SET UP BY DEFENDANTS

It is definitely his view that Mr Chaudhuri conjured up a wholly imaginary Kumar in his cross-examination of the plaintiff, which, in so far as it was intended to defeat the plaintiff, was thus a mere futile shooting beyond the mark it would, as he says, have defeated the real Kumar himself (*Vol 18, p 259, ll 1-3*), the supposed ignorance which counsel claimed to have brought out being not real ignorance at all. On the few points on which, according to the learned judge, he presumed to touch reality, the plaintiff is said to have given correct answers almost in every instance, the exceptions where he failed being in his opinion not at all material (*ibid, p 260, ll 16-22 and p 275, ll 5-26*)

The cross-examination, as the learned judge points out (*ibid, p 124, l 28—p 125, l 5*), apart from trying to establish that the plaintiff was not a Bengalee,—a topic which he deals with separately (*ibid, pp 421-422*),—was aimed at showing that he was not educated at all, and that he knew nothing of football, tennis, cricket, polo, billiards, nothing of guns or *shikar*, nothing of horses and horse-races, nothing of English clothes, English meals, or English articles of furniture, nothing of photography, or of music and singing. As against this, the Kumar, as visualised by learned counsel, was the Kumar put to one of plaintiff's commission witnesses, Satya Dhenu Ghosal,—a "well-educated, well-polished young Bengalee aristocrat" (*Vol 14, p 3, ll 15-16*), a "thorough-going sportsman", as put to P W 945, Jatindra Nath Lahuri (*Vol 10, p 403, l 18*), elegant as a "Raja's son", as put to various witnesses (e.g., P W 112, *Vol 5, p 93, ll 21-22*, P W 402, *Vol 6, p 436, ll 7-8*, P W 433, *Vol 7, p 5, l 32*, P W 461, *Vol 7, p 142, ll 1 and 7-8*), accustomed to English clothes, English meals, speaking English, and living in English style (*Vol 18, p 125, ll 22-27 and p 252, l 35—p 253, l 14*)

It is not difficult from the cross-examination to form an accurate idea of what the plaintiff was like—of his ways of living, his habits and pursuits, his speech and manners, the extent of his literacy or of his knowledge of sports or amusements, and the whole question is how far he may be supposed to have come up to the standard of the real Kumar as he was, or was likely to have been, if he was living at this date. The learned judge admits that, apart from anything else, if it was shown that the Kumar was a well-educated man, and knew English, it would mean an end of the plaintiff's case (*ibid, p 253, ll 43-44 and p 256, ll 8-9*), just as he says, on the other hand, that if it appeared that the Kumar was absolutely illiterate, except that he could achieve his signature in English and in Bengali in certain forms, it would be an end of the cross-examination (*ibid, p 256, ll 9-11 and p 260, ll. 28-30*)

AVOIDANCE OF MEMORY IN CROSS-EXAMINATION

Mr Chaudhuri was indignant because the learned judge ventured to suggest that counsel had studiously tried to avoid the memory in his cross-examination of the plaintiff, but one cannot help feeling that the indignation was only a cover to conceal what he must have known was nothing but the

barest truth The criticism, he protested, was as unjust as it was unfounded, but curiously enough, while he was so emphatic in denying the charge, his arguments before us only sought to find an explanation for it Quite early in his opening, in fact, he thought it right to remind us of the difficult position which counsel cross-examining the plaintiff found himself in in this case by reason of its peculiar facts On the one hand, it was said, the Kumar's was a short and uneventful life, singularly lacking in a rich background of incidents and materials, while on the other, it was pointed out, the plaintiff came into the box after long years of close and intimate association with the members of the family, having all the time been surrounded by a multitude of old servants and dependants, and publicly exhibited and interviewed by all and sundry as the second Kumar, the centre in fact of a ceaseless propaganda, thus opening up to him diverse channels of information regarding the facts and events of the Kumar's life, and affording also abundant time and opportunities for immaculate tutoring

It was inevitable in these circumstances, counsel complained, that the plaintiff had to be cross-examined only on such things as he was not likely to anticipate, things which tutoring could not reach, quoting the famous dictum of Lord Chief Justice Cockburn that in such cases the ignorance of yesterday very often became the knowledge of to-day

Whether this was or was not a valid excuse, it was certainly an admission that the plaintiff was not questioned about many matters which might otherwise have afforded a good and valuable test of memory, and thus is precisely what the learned judge had the temerity to point out I do not pretend to know much about the art of cross-examination, and have no right to put my little or no experience in this line against the acknowledged authority of learned counsel for the defendants, but it does seem to me to be curious, as it did also to the trial judge (*Vol 18, p 259, ll 9-11*), that the supposed tutoring of a witness should be deemed a ground for withholding cross-examination. Equally extraordinary appears it to be, speaking again with due deference, that counsel should want it to be understood at the end of the cross-examination that he did not admit any statements on points as to which he had not specifically questioned the plaintiff (*Vol 4, p 176, ll 1-2 and Vol 18, p 124, ll 24-27*) I shall not pause to consider if the authority which Mr Chaudhuri cited before us, *Browne v Dunn*, (1893) 6 Reports, 67, H L, lends the vestige of a support to the course he adopted

If Mr Chaudhuri so strongly resented the suggestion that in cross-examining the plaintiff he had left the memory unexplored, equally bitter was he against the learned judge for his presuming to express the further opinion that the cross-examination had only a fictitious Kumar for its background Not only did he vigorously repudiate the criticism, but he turned round and said that this itself was a fiction invented by the learned judge in order to justify the plaintiff after the utter collapse to which he had been reduced under the withering fire of counsel's cross-examination,—a collapse which, it was pointed out, made it necessary for the plaintiff himself to call a mass of false evidence afterwards, aimed at bringing the real Kumar down to his own level, thus giving a very much poorer picture of the Kumar than that presented by the plaintiff's earlier witnesses

DEFENCE PICTURE OF THE REAL KUMAR

As usual, it is Mr Chaudhuri's attack on the learned judge, and not the learned judge's attack on him that turns out to be unfounded Taking the

question of education and literacy alone, one is tempted to ask whether the "well-educated, well-polished young Bengalee aristocrat" put to S D Ghosal was a mad phantasy of the learned judge, or the array of English terms so pompously paraded in the course of the plaintiff's cross-examination a fanciful emanation from the same source. One asks, again, who was responsible for that amazing document (*Ex 468, Vol III, pp 219-275*), so vividly described by the learned judge (*Vol 18, pp 257-258*) and so aptly referred to by him as a "lesson-book" of Phani Bhusan Banerjee (*ibid, p 32, ll 8-10 and p 162, ll 12-14*),—a storehouse of the supposed details of the Kumar's life, from which the witness (D W 92) was expected to build up a refined English-knowing and English-speaking nobleman, as familiar with English dishes as he was fond of English sports and English society.

A "WELL-EDUCATED, WELL-POLISHED ARISTOCRAT"

Mr Chaudhuri tried no doubt to make out before us that in putting his case of a "well-educated, well-polished aristocrat" to S D Ghosal, he did not mean what he said, but while nobody suggests that he was ascribing book-learning and culture to the Kumar by these words, one finds it difficult to agree that the phrase he used had reference only to manners, and not to education at all. Quite inconsistently, though quite inaccurately, counsel went on to accuse the learned judge of having shut his eyes to the fact that witness' answer to the question was "yes", as if he meant thereby to subscribe to the Kumar's description as a "well-educated" Bengalee, whatever that expression might connote. In point of fact it will be seen the witness refused to do so, sticking to what he had already said, touching only the Kumar's manners.

"When I first met the Kumar of Bhowal, I found him in manners and conversation just like a man of his position and status" (*Vol 4, p 3, ll 13-14*)

Then followed the question, paraphrasing the answer, but quietly introducing the words "well-educated" into it.

"Q—That is, you found him to be a *well-educated*, well-polished young Bengalee aristocrat?"

But the witness was too wary to walk into the trap.

"A—I had only an ordinary conversation with him and I found him quite gentlemanly in speech and manners" (*ibid, ll 15-18*)

One can understand this attempt of learned counsel to save his cross-examination of the plaintiff by toning down his fancied image of the second Kumar, as it is possible also to appreciate the desperate efforts which, as the learned judge points out (*Vol 18, p 125, ll 30-31*), the defendants afterwards made to prove a bare literacy and a bare ability to speak English, though, it may be added, not without a struggle at times to keep alive a pale shadow of the Kumar of Mr Chaudhuri's earlier version. But all this only lends weight and substance to the comments of the learned judge against which counsel so vehemently protested.

Looking at the matter from another point of view, it seems to me that the standard which the plaintiff set of himself *qua* the second Kumar in the witness-box is, on the defendants' own case, a refutation of the picture as conjured up by Mr Chaudhuri. If there was any truth in that picture, is it at all likely that those who were out to pass off a counterfeit imitation

should have produced such a hopeless caricature? Admittedly, the plaintiff had about him persons, the sister and other relations and associates, who must have known all about the second Kumar and his educational and other attainments, and if the standard set up by Mr Chaudhuri was at all correct, it is hard to believe that these persons would not or could not have trimmed up their *protege* at least to a near approximation to that level, so as to avert the disaster of a certain crash in cross-examination. According to Mr Chaudhuri, to put it in his own picturesque phraseology, there was the evolution of the plaintiff from the chrysalis of a naked sadhu to the full-grown butterfly of a Kumar, and yet, supposing he is right, all this laborious process ended in producing a butterfly without its wings!

KUMAR'S LITERACY AND EDUCATION

Mr Chaudhuri suggested at one stage that the plaintiff's propounders had deliberately avoided teaching him how to write lest he might in the process of learning develop characteristics of his own which would betray him at once, but apart from the fact that this would not explain why he could not still have been taught how to read to the supposed standard of the second Kumar, learned counsel apparently forgot that there should have been in that case no occasion for a change in the plaintiff's case. All his witnesses, those who had come before him and those who came after, should equally have known the precise calibre of the second Kumar which they were expected to speak to. With all respect to Mr Chaudhuri, he seems to my mind to have taken up an absurd position. The plaintiff had been fully coached and tutored,—that is the excuse which counsel gave for not questioning him on many points, and still in the matter of reading and writing, he had been left untouched, in order that at the very first touch of the cross-examiner he might stand exposed in all his bareness, the illiterate Punjabee peasant he was!

NO CHANGE OF CASE ON PLAINTIFF'S SIDE

The fact is that Mr Chaudhuri had pitched his own cross-examination so high that he himself left the plaintiff wholly untouched, and I have not the slightest doubt, as the learned judge points out (*Vol 18, p 266, ll 4-5*), that so far as the plaintiff's advisers are concerned, they put him into the box exactly as he was in 1921. As for a change of case, this was on the defendants' side, and not on that of the plaintiff, and it is utterly misleading to suggest that any of his earlier witnesses had conveyed an idea of the second Kumar's literacy or education so widely at variance with the picture he gave of himself during his examination as to have necessitated the calling of false evidence later on to support his own. A reference to the evidence of some of these witnesses should be a sufficient answer —

Kamal Kamini Devi (in cross-examination) *Vol 1, p 495, ll 7-15,*

Sudhangshu Bala Devi (in cross-examination) *Vol 2, p 237, ll 25-26 and p 247, ll 1-2,*

Tara Prosad Chowdhury (in examination-in-chief) *Vol 2, p 326, ll 1-6 (in cross-examination) p 343, ll 5-15,*

Nundo Lall Guin (in cross-examination) *Vol 3, p 221, ll 31-33,*

Bepin Behary Chakravarty, P W 1 (in cross-examination) *Vol 4, p 29, ll 30-33 and p 31, ll 12-13,*

Surendra Mohan Adhikari, P W 2 (in examination-in-chief) Vol 4, p 33, ll 22-25 (in cross-examination) p 35, ll 5-13,

Harish Chandra Nandi, P W 3 (in cross-examination) Vol 4, p 41, ll 3-23,

Radhika Mohan Goswami, P W 4 (in examination-in-chief) Vol 4, p 45, ll 10-13 (in cross-examination) p 51, ll 6-28 and p 52, ll 7-11,

Suresh Chandra Mukherjee, P W 5 (in examination-in-chief) Vol 4, p 55, ll 24-29 (in cross-examination) p 62, ll 36-39, p 63, ll 4-8 and ll 19-23, and p 64, ll 7-8,

Ganga Charan Banerjee, P W 8 (in examination-in-chief) Vol 4, p 79, ll 12-14 (in cross-examination) p 82, ll 35-37 and p 83, ll 7-8,

Jitendra Behary Mukherjee, P W 9 (in examination-in-chief) Vol 4, p 87, ll 23-30, p 88, ll 10-11 (in cross-examination) p 90, ll 38-41 and p 91, ll 3-8

The definite case which the plaintiff made, and from which there was no deviation in the evidence either of his earlier or of his later witnesses, was that the second Kumar had just learnt enough to be able to spell out his Bengali and English signatures by his own unaided effort (Vol 4, p 95, ll 10-12 and p 149, ll 21-32), and that thereafter, as he said, assuming he was the second Kumar, he gradually forgot all the learning he had acquired except that he retained his capacity for making his English and Bengali signatures mechanically (*ibid*, p 150, ll 7-8, p 168, ll 20-26, p 169, ll 1-16, p 172, ll 21-34 and p 173, ll 3-33, and Vol 18, p 280, ll 13-17)

VARYING VERSIONS OF DEFENDANTS

As far as the defendants are concerned, their case is represented at one end by the "well-educated, well-polished young Bengalee aristocrat" put to S D Ghosal (Vol 4, p 3, ll 15-16), and at the other by the "tea goden gan" of D W 433, R C Sen, being all the effort in "broken English" which, according to witness, the second Kumar showed himself capable of, to say "tea garden gone", in speaking to an Englishman in his presence at the Viceroy's Cup races in 1905 (Vol 17, p 372, ll 33-34 and p 373, ll 7-12). In between, besides D W 92, Phani Bhusan Banerjee with his "lesson-book", was Bibhabati Devi herself to hear the second Kumar talking English "at many places" (Vol 12, p 209, ll 28-29), and even talking "fluently" with the "Sahib doctor" to explain his disease (*ibid*, p 290, ll 4-6), and there was also of course her redoubtable brother to say that he had heard him speak English not only with Mr Meyer and Mrs Meyer, Mr Wharton and Mr Heard, and some of the "firangi" (Eurasian) employees, but even "in every day conversation with us", using, however, on such occasions only "some words of English" (Vol 16, p 425, ll 7-11) the Kumar, according to this witness, would talk English "as an educated man would", but not, he was willing to add, "as a highly educated man" (*ibid*, p 538, ll 3-4),—a rather feeble effort to tone down Mr Chaudhuri's "well-educated Bengalee" to the level counsel would like to postulate!

Satyendra pretended to be even familiar with the English handwriting of the second Kumar (*ibid*, p 425, ll 12-13), and shown a promissory note executed by the latter on the 1st April, 1905, for a loan of Rs 10,000/-, which the defendants had called for from the High Court (*Ex Z(199)*, Vol I, p 195, and Photo Album, Vol II, p 39), he had not only no difficulty in identifying

the signature on it, but also said that the words "Ten thousand" below the signature were in the Kumar's handwriting (*Vol 16, p 425, ll 15-16*), "written as an educated man would write", as he afterwards added in cross-examination (*ibid, p 438, ll 6-9*) Whether, however, they were actually written by the Kumar or not, the writing itself shows, as will appear from the facsimile in the photo album, that the writer could not spell the word "thousand" obviously he did not know the letter "u", and achieved what looks like a "w" in trying to write it, and was probably going to add another "u", when somebody must have stopped him This certainly does not look like the writing of an "educated man", but if anything, only confirms the Kumar's inability to spell even simple English words, furnishing incidentally one more illustration of the fact that every document that happens to get on the record helps the plaintiff's case

I consider that the patent fact which was admitted by Mr Chaudhuri himself that the plaintiff had not been taught either the English or the Bengali alphabet is enough to give a death-blow to the story that the second Kumar was "educated", even if he could not be regarded as "well-educated"

FORGED BENGALI LETTERS PRODUCED BY DEFENDANTS

If the second Kumar was really literate and knew how to write, it is surprising that excepting a few signatures, only one in Bengali and the rest in English, the defendants were unable to produce a single scrap of writing in his hand from the papers and records at the Rajbari or other likely places, leaving aside no doubt a batch of 9 letters supposed to have been written by him, 8 to his wife Bibhabati Devi and 1 to her sister Provabati (*Ex Z(142) series and Z(143), Vol I, pp 90-97 and 99, photo prints in photo album, Vol I, pp 34-42*), which have been fully dealt with by the learned judge and rightly held by him to be forgeries (*Vol 18, pp 292-297*) Curiously enough, the defendants had filed these Bengali letters in court in a sealed cover, not to be opened until the examination-in-chief of the plaintiff was over (*Order No 203, dated 19-1-32, Vol I, p 16*), a proceeding for which Mr Chaudhuri was unable to offer any explanation, except to say that the object was to prevent the plaintiff from obtaining specimens of the signature to serve as models from which he might learn to copy Counsel forgot that the plaintiff could not take photographs or make copies of the documents without notice and without the order of the court He forgot also that if the plaintiff might procure models for his English signature before December 1926 when he submitted his memorial to the Board of Revenue which contained as many as 18 such signatures, it is only reasonable to suppose that he could obtain Bengali models as well, independently of the specimens which the defendants filed in court only in 1932 Then, again, he overlooked that none of these letters contained full signatures of the second Kumar, and that as such they would be useless as models

Speaking of these Bengali letters, which, as I have said, the learned judge finds to be spurious, I might perhaps draw attention to the fact that in all of them the *rafala*, or the right to left horizontal stroke indicating the addition of "ra", in the last compound letter "ndia" of the word "Ramendra", uniformly ends in a characteristic hook, which visibly distinguishes the signatures therein from the easy curve of the *rafala* in the admitted signature of the second Kumar in *Ex 2 (Photo Album, Vol I, p 1)*

The more one looks into the facts and circumstances of the case, the more is one convinced, on the one hand, of the correctness of the view taken by the learned judge regarding the cross-examination of the plaintiff, and on the other, of the futility of Mr Chaudhuri's criticisms of it. Learned counsel himself made an important admission, which seems to me in fact to go a long way in establishing the plaintiff. It is that in cross-examining him, he had purposely avoided putting him questions on matters on which he was likely to have been tutored or to have acquired knowledge from adventitious sources. The answers, therefore, which the plaintiff gave to such questions as might be considered to have been a legitimate test of memory have an unquestioned and unquestionable significance of their own, and as the learned judge points out, the plaintiff hardly failed on any of these. Truly enough, as Lord Chief Justice Cockburn observed, the ignorance displayed by the claimant in such cases matters more than the knowledge which he may exhibit, but I am certainly not prepared to say that the plaintiff here betrayed any such fatal ignorance, whether on matters which touched real memory (*Vol 18, pp 275-278*), or on topics of general interest (*ibid, pp 260-275*), making due allowance of course for possible lapse of memory, the ignorance of terms as distinguished from things being obviously of no consequence.

JUDGE'S CONCLUSIONS ACCEPTED

Each of these questions, including those of literacy (*ibid, pp 278-297*) and handwriting (*ibid, pp 297-304*), has been separately and fully dealt with by the learned judge, and though Mr Chaudhuri has canvassed them over again in his own way as hard and in as elaborate detail as he could, I for one, sitting here in a court of appeal, cannot persuade myself to hold that either the learned judge's appreciation of the evidence or any of his findings thereon has been shown to be so perverse, arbitrary or clearly wrong that it should be set aside. I deem it right, on the other hand, to say, on an independent examination of the evidence, giving to Mr Chaudhuri's arguments every consideration that is due, that I have come to the same conclusions as the learned judge on all the material points in controversy.

IS THE PLAINTIFF A BENGALEE?

On the question as to whether the plaintiff is a Bengalee or not, which the learned judge considers as a separate topic towards the end of his judgment (*Vol 18, pp 414-422*), I fully agree with him that the cross-examination on this point was mostly a play on words designed to confuse and confound rather than to elicit facts showing true knowledge or the want of it, and I find it unnecessary to say more than that I unhesitatingly accept his conclusions. The outstanding fact remains that the plaintiff gave his evidence in Bengali, Bhowali Bengali as it was, in the presence of a Bengalee judge, and with a Bengalee counsel pitted against him who was only too alert to have forgiven a single lapse on the part of the witness.

Taking the cross-examination as a whole, it is my definite opinion that the plaintiff stood his ground remarkably well, establishing his mental identity as completely as no impostor could ever hope to do, certainly as none in recorded legal annals had ever done before.

FINAL CONCLUSION ON ISSUE OF IDENTITY

In the result, there is in my considered judgment no possible getting away from the conclusion arrived at by the learned judge that the plaintiff is Ramendra Narayan Roy, the second son of the late Raja Rajendra Narayan Roy of Bhowal (Vol 18, p 427, ll 12-13)

This, then, disposes of the two main issues of fact in the case, namely, issues 4 and 5, on both of which, therefore, the decision must be in favour the plaintiff and the judgment of the court below fully upheld

DEFENCE CASE OF PLAINTIFF BEING A PUNJABEE

Arising out of and in connection with the question of identity, there was the specific case which, as already stated, was made by the defendants at the trial, if not in their pleadings, to the effect that the plaintiff was a man named Mal Singh of Aujla, a village in the district of Lahore in the Punjab, who afterwards came to adopt the name of Sunder Das on his initiation as a *sannyasi*

The defendants were not of course called upon to make any definite case in this behalf, but they chose to make one, as they were certainly entitled to do, and if they succeeded in proving it, they would no doubt have demolished the plaintiff's claim almost as effectively as by proof of the second Kumar's death and cremation at Darjeeling. For if the plaintiff was Mal Singh of Aujla *alias* Sunder Das, he was not and could not be Kumar Ramendra Narayan Roy of Bhowal, though the converse of the proposition did not hold, for the plaintiff might not be this man from the Punjab, and yet might not be the Kumar of Bhowal

Agreeing with the learned judge, I hold that the defendants have signally and miserably failed to prove this part of their case. If I am not mistaken, learned counsel for the appellants himself placed but half-hearted reliance on it in the course of his arguments. I have had occasion already to make some references to the Punjab enquiry, and if I do not propose to discuss it any further, it is because the learned judge has dealt with it very fully in his judgment (Vol 18, pp 402-414), and it will serve no useful purpose to repeat his reasons and conclusions with which I find myself in entire accord. In their attempt to prove the supposed real identity of the plaintiff, the defendants have only convicted themselves of chicanery and fraud of the worst description, the details of which have in fact been clearly unravelled by the court below. In any case, the proof of such identity did not purport to rest on anything more than dubious recognition from mere photographs

QUESTION OF LIMITATION

As in my opinion the defendants must fail on the merits, it becomes necessary to consider whether they can successfully resist the suit on the ground of limitation, which was in fact made the subject of a specific issue, issue No 2. The learned judge has dealt with the question very briefly, but to my mind quite adequately, in the concluding part of his judgment (Vol 18, p 428), holding that the suit is not barred by limitation. Mr Chaudhuri did not argue the point in court, but handed in a very full note on the subject, as he also did on other important topics in the case, no doubt with notice to the respondent accompanied by copies of such notes

It will be material to bear in mind the following dates —

8th May, 1909	Supposed death of the second Kumar
4th May, 1921	Declaration of identity by the plaintiff as the second Kumar
3rd June, 1921	Lindsay's notice declaring the plaintiff to be an impostor
30th March, 1927	Resolution of the Board of Revenue rejecting the plaintiff's memorial for setting aside the impostor notice
24th April, 1930	Date of institution of the present suit

It may be stated at once that the question of limitation will have to be decided on the allegations in the plaint. The plaintiff will, therefore, have to be assumed as the second Kumar.

AMENDMENT OF PLAINT

The suit as originally framed was one for a declaration that the plaintiff is the second Kumar and for a permanent injunction on defendant No 1, Bibhabati Devi, to restrain her from interfering with the plaintiff's possession of an one-third share of the Bhowal Raj Estate. By a petition filed on the 19th February, 1931 (*Vol 1, pp 248-249*), the plaint was sought to be amended by adding a prayer for confirmation of possession, and alternatively, in the event of the plaintiff being found not to have been in possession, for recovery of possession. The plaint already contained a statement that the plaintiff was in possession of an one-third share of the estate by realisation of rent from tenants, and the amendment did not, therefore, introduce a new case. By order No 99 dated the 15th April, 1931, the then learned subordinate judge (not the judge who afterwards heard the suit) allowed the amendment (*ibid, pp 9-11*). The amendments have for the sake of convenience been printed in red ink in the paper-book (*ibid, pp 119-120 and 124-125*).

On these facts, the first point made by the appellants is that apart from the alternative prayer for recovery of possession introduced by the amendment, as contained in clause (ka 1) of paragraph 13 of the plaint, the suit is a suit for declaration of identity and title and of actual present possession, and that such a suit is governed by article 120 of schedule I of the Indian Limitation Act, which provides a limitation of six years for all suits not specially provided for elsewhere, time to run from when the right to sue accrues. The right to sue here, it is said, accrued on the denial of the plaintiff's identity by the defendant No 1, that is to say, on the issue of Lindsay's impostor notice of the 3rd June, 1921, this notice being alleged in paragraph 4 of the plaint to have been published "as the result of a conspiracy of defendant No 1 with her brother and at their instigation". The averment in paragraph 12 of the plaint that the cause of action arose from the 30th March, 1927, the date of rejection of the plaintiff's memorial by the Board of Revenue, and that it has continuously arisen after that, is challenged as wrong in law.

SUIT GOVERNED BY ART 144

In my opinion, there is no substance in the appellants' contention, and that for the following reasons —

- (i) For purposes of limitation it will not do to refer to the plaint as originally framed, but the plaint as amended will have to be

looked to. The prayer for possession cannot be put aside as an unnecessary prayer on the ground that there is no allegation in the plaint that if the court granted the declaration of identity asked for, the defendant No 1 would still resist the plaintiff in recovering, or continuing in, possession. The whole basis of the plaint is that the defendant No 1 was wrongly interfering with the plaintiff's possession and otherwise denying his right to it, although she knew him to be her husband.

- (ii) The suit was not merely one for declaration of identity, even as originally framed, but also asked for a permanent injunction. On the allegations in the plaint, this was a continuing cause of action.
- (iii) It should be further noted that the plaintiff made the definite case that he was in possession by realisation of rent from tenants.

It is next urged that the addition of the alternative prayer for possession did not take the suit out of article 120. This argument is again based on the view that the only allegation against defendant No 1 is that she claimed to hold the estate as a Hindu widow. This assumes that if the plaintiff was able to prove that he was the Kumar, it would give him all the relief that he needed. As already pointed out, this is an entire misreading of the plaint. The fact that defendant No 1 raised a plea of adverse possession in her written statement itself shows that the prayer for possession was not at all an unnecessary one.

I hold that article 120 has no application to the case, but that it is governed by article 144.

On this the defendants' case is that the possession of Bibhabati became adverse to the plaintiff from May 9, 1909. This is sought to be supported on the ingenious plea that a Hindu widow takes as an heir to her husband, and that there can, therefore, be no question of defendant No 1 purporting to have represented the plaintiff, while holding the estate from after his supposed death, as held by the learned judge. A widow's estate, it is said, cannot co-exist with a living husband. The moment, therefore, she assumes possession as a widow and an heir, there is an effective ouster of the person whose widow and heir she claims to be. This is all casuistry. On her own case, the defendant No 1 was claiming title and possession through or under her husband. *ex hypothesi* there was no intention to exclude the husband, if it turned out that he was not dead. In my opinion, the possession of a Hindu widow cannot be adverse to the husband, any more than to the husband's reversioner, as such possession is not and cannot be in denial of the right of the husband.

The defendants cite the authority of an American case *Pearce v French*, quoted *in calenso* in Wood's Limitation, in support of the proposition that even if a party has been in possession under an honest mistake that he is entitled to the property and without any desire of depriving the real owner, time nevertheless runs and extinguishes the title of the real owner on the expiry of the statutory period. It is not necessary to hold that possession under a mistaken belief may not amount to dispossession in the eye of law. The very act of possession, though under an honest mistake, may be an assertion of title by the possessor and the denial of the title of all others, and as has been pointed out by the Judicial Committee in *Secretary of State for India v Debendra Lal Khan*, (1933) L.R. 61 I.A. 78, it is sufficient that the possession be overt and without any attempt at con-

cealment and need not be brought home to the knowledge of the rightful owner. All the same, the principle contended for by the defendants, while it may hold good as between the true owner and a stranger, cannot, in my opinion, apply as between the true owner and a person who admittedly claims to hold as an heir of the true owner under a mistaken belief that the true owner is dead.

It is not necessary to pursue the matter further. I hold that the learned judge was right in the view he took on the question of limitation.

CONCLUSION

I have now completed my review of the case. I cannot say I have touched upon all points, nor that I have dealt with all points with equal fulness, but I believe I have said enough to show why I concur with the learned trial judge in his findings on the broad facts of the case, upon which, and not upon trivialities, must the decision ultimately depend.

It has been no easy task for the learned judge to disentangle these broad facts from the unparalleled mass of details with which the main stream of narrative was choked at every step, and as I have said before, he has considerably lightened the burden of the appellate court by the manner in which he has accomplished that task. I have read and re-read his judgment several times over, and it is no small tribute to the care, thoroughness and vigilant attention he brought to the consideration of the case that I was unable to trace a single error of fact in his statements even on questions of small detail, barring a few obvious slips. When I think of the time I have taken in preparing my judgment, I cannot but be filled with admiration for the learned judge who was able to produce his in less than half that time, and be it remembered, was able to do so without the exceptional facilities of the printed record which were available to this court. It is needless for me to remark once again on his appreciation of the evidence in the case which I have had occasion to refer to several times before. It is enough to state that it has been so fair and full that sitting in appeal I should not feel justified at all in interfering with his findings on questions of fact. It may be that every appeal from a judge trying a case without a jury may be regarded in one sense as a re-trial, but where there is nothing to show that the trial court misdirected itself on any point, it is not the function of the appellate court to come to a contrary decision. As I have already shown, in my opinion the judgment of the learned judge does not show any misdirection.

Before leaving the case, I should like to express my acknowledgments to learned counsel on both sides for the ungrudging and valuable assistance they gave to the court, not only by their full and copious arguments, but by the still fuller notes and references they supplied.

I must say a word also in commendation of the staff of this court for their excellent work in the difficult matter of the preparation of the printed record, which they completed in a little over twelve months' time. The number of errors or omissions noticed in the paper-books during the hearing was almost negligible.

The execution of the prints in the Photo Albums has been of a particularly high standard.

I desire also to acknowledge the assistance I derived from the stenographers of this court who helped in typing out my judgment to my dictation, among whom Mr. Haradon Mukherjee and Mr. Panikar deserve special mention.

BISWAS, J 'S SUPPLEMENTARY STATEMENT

27th August, 1940

BISWAS, J —It remains now to refer to a matter affecting the delivery of judgment in this appeal. The appeal, as I stated before, had been heard by a Bench of three judges which the Chief Justice had specially constituted for the purpose, though under the rules of this court a Division Bench of two judges would have been fully competent to deal with it. It so happens that under circumstances not anticipated at the time this special Bench was appointed, judgment has had to be pronounced now with two only out of the three judges who had heard the appeal present in court. The facts are these —

The hearing commenced before us three on the 14th November, 1938, and continued practically without a break *de die in diem* till the 14th August, 1939, a period of full nine months, representing a total of 164 sittings of the court. After the hearing was over, there were barely 13 working days left before the court dispersed for the Long Vacation on the 31st August, 1939. The senior member of the Bench, Costello, J, then left for England, having taken a fortnight's leave in continuation of the vacation. On the re-opening of the court on the 16th November following, he was accordingly absent. While in England, he afterwards extended his leave from time to time, with the result that he has not yet returned, and it is uncertain whether he will do so at all before he retires, his retirement being due in normal course some time next year.

COSTELLO, J 'S JUDGMENT SENT OUT FROM ENGLAND

In these circumstances, our learned colleague has sent out from England what is evidently meant to be his "judgment" in the appeal, which was in fact received by the Registrar of this court on the 17th August last. As I announced at the commencement of delivery of my own judgment, it will be my duty to read it out in open court in due course, but up to now neither my learned brother, Lodge, J, nor I have seen it, nor have we had any knowledge of its contents.

Before Costello, J, left for England, I placed him in full possession of the conclusion I had reached in the case as a whole, tentative, of course, as it was at the time, and equally did my learned brother Lodge, J intimate to him the opinion he had formed. Our learned senior, however, did not indicate to us which way he was inclined or how he proposed to dispose of the appeal, and we broke up in this state of uncertainty, no *final* decision, whether by way of agreement or disagreement, having been reached as a result of our joint discussions.

This was unfortunate, as Lodge, J and I happened to differ in our conclusions. On being apprised of our views, as stated, our learned leader occupied himself for the next few days mainly in dictating the introductory portion of a judgment, containing in more or less non-committal terms a bare narrative of the conflicting cases of the parties and of the arguments advanced by their counsel in this court.

Before we finally dispersed, however, it was arranged, in case Costello, J's return was delayed or he might not find it possible to return at all, that we should both send him our draft judgments embodying our respective views.

My learned brother Lodge, J was able to complete the writing of the substantial portion of his judgment before Christmas of 1939, and a copy of his draft was mailed to Costello, J in or about the last week of December that year. So far as I was concerned, I regret to state that the preparation of my judgment was delayed very much longer than I had anticipated, and for this I have no apology to offer except the judgment itself. It is enough to state that with all my efforts, I could not get it finally ready before the middle of June this year. Portions of my judgment, however, as they were completed, were despatched to Costello, J from time to time by air, the last two instalments having been mailed on the 18th and 25th of May, 1940. This carried the judgment up to the end of the Darjeeling chapter. No further instalments were sent, as it was understood at the time that there was a likelihood of his returning, if he was able to secure a passage out to India. This expectation, however, failed to materialize, and he accordingly sent out from England about the end of June or the beginning of July the "judgment" to which I have already referred.

I believe, but cannot be positive that my learned brother had received all the instalments of my judgment which had been sent to him before he completed his own. I may state that the last instalment which was mailed on the 25th May dealt with Rescue, while the portion despatched just before that on the 18th May contained the discussion on the subject of the morning cremation, undoubtedly one of the most important topics of the Darjeeling chapter. It is clear he had not before him my views on the question of Identity.

Though no final decision was reached at a joint conference in the sense I have indicated, before Costello, J left for England, I should perhaps be justified in saying, judging from the indications he had given while here, that his views, tentative as they were, were in accord with the conclusions I had come to and have since expressed in my judgment.

The fact that Lodge, J and I have not found it possible to agree undoubtedly lends a special importance to the opinion of Costello, J, as it should have for this reason a determining effect on the result of the appeal. Not as a matter of form, but as a matter of substance, therefore, it is essential to consider if that opinion should not have been formed and expressed at a final conference with his colleagues.

A FULL BENCH RULING

As Sir Barnes Peacock observed in the Full Bench cases of *Mahomed Akil v Asadun-mssa Bibee* and *Mutty Lall Sen Gywal v Deshkar Roy*, (1867) 9 Weekly Reporter 1, at p 29, it is not a mere technical requirement, but one founded upon a fundamental principle essential to the due administration of justice, that every judicial act which is done by several judges ought to be completed in the presence of the whole of them. In his opinion, the learned Chief Justice went on to say, a final judgment ought not to be pronounced by a court consisting of several judges in a case in which they differ, until by conference and discussion, they have endeavoured to arrive at an unanimous judgment. If, after discussion and after deliberately weighing the arguments of each other, the judges cannot agree, their several judgments ought to be delivered in open court in the presence of the others.

The head-note of the case as reported would seem to suggest as if it decided that if some of the judges who had heard a case ceased to be judges

of the court before judgment was pronounced, any written opinions they might have left in court before their retirement, whether intending them to be their judgments or not, could not be treated as judgments in the case, but must be regarded as mere minutes or memoranda. But as Markby, J. pointed out in *Mussamat Parbatti v. Mussamat Bhikun*, (1872), 8 B. L. R. 98 (Appendix), referring to the Full Bench decision, it was a mere accident that those judges afterwards left the court before the case was finally disposed of, and that circumstance had no bearing on the matter at all, except that it rendered the matter irremediable. What was stated to have been held in that case was, that where there are several judges who had to give their opinion in a case, the mere handing in to the Registrar by a judge of his own opinion, without there having been any final consideration by all the judges as to what their final decision was to be, was not a judgment. As the learned judge put it quite clearly, the decision in that case proceeded upon this that in order to there being a final judgment of the court, there must have been a final meeting and consideration by all the judges who heard the case as to what their judgment was to be.

It is this fundamental basis that what Costello, J. has sent out as his "judgment" may be said to be lacking, and the question arises, how far this might go to affect its validity as a judgment. It may be stated that there has been no further discussion between him and us by correspondence since he left, or since he received our draft judgments.

QUESTIONABLE VALIDITY OF THE JUDGMENT

Having given the matter my best consideration in the light of the Full Bench case referred to above, the conclusion I have come to is this: if I am right in believing, as I do, that Costello, J.'s tentative views were in accord with those I have expressed, and if it turns out now he has since revised his opinions, the absence of an opportunity by further discussion and argument to have influenced his final judgment would indeed be a matter of consequence, affecting the final result of the appeal. In that case, if I have correctly interpreted the Full Bench ruling, it would not be a matter to be brushed aside as a mere technicality, but be an objection striking at the very foundation of the so-called judgment, or opinion, as I should prefer to call it.

And when it is added that at the time of writing it out, my learned brother had not had with him the printed record of the appeal, either the oral or the documentary evidence, except only the volume containing the judgment of the trial court, and except, as I gather, some notes of his own (fairly copious) which he had made before leaving for England, the legal value of such a judgment would seem to be all the more dubious.

NEW RULE

I am not unmindful that with a view to meet the contingency of a judge being absent from the court at the time of pronouncement of judgment, this court, in exercise of the power vested in it under section 122 of the Code of Civil Procedure, has recently framed a new rule, with the approval of the Provincial Government, as required by section 126, making an amendment in the provisions of the First Schedule to the Code. This rule which

is to be added as rule 4 to Order XLIX, and which came into effect on the 15th August last, the date of its publication in the *Calcutta Gazette*, is as follows —

“A judge of the High Court may pronounce the written judgment or opinion of any other judge of the said court signed by him when such judge continues to be a judge of such court but is prevented by absence or any other reason from pronouncing that judgment or opinion in open court”

It is not necessary to consider the scope or validity of this rule, or some of the questions which seem to arise on the face of it whether, for instance, it is or is not inconsistent with the provisions in the body of the Code, or whether the words “continues to be a judge of such court” in the rule exclude a judge who is on leave, or whether, again, where the Chief Justice constitutes a Division Court for the hearing of a particular appeal in exercise of the power conferred by section 108 of the Government of India Act, 1915, a power which has been preserved by section 223 of the present Government of India Act of 1935, this rule would or would not cure the defect in the constitution of such Division Court, if on a proper construction of the provisions of these Acts or of the Letters Patent, a defect may be supposed to arise by reason of the absence from the court of one of the judges composing it. Suffice it to say that the question here, as I apprehend the matter, would not be the technical objection of Costello, J’s judgment being pronounced by one of the other judges in his absence, but one of a more fundamental character the question, namely, whether or not in the circumstances it would be a valid “judgment” or “opinion” which could form the basis of a “decision” under section 98 of the Code of Civil Procedure or clause 36 of the Letters Patent, whichever of these provisions might apply.

Having considered the matter carefully, I should say, as at present advised, that the answer to this question should be in the negative. The opinion of Costello, J should in that event be excluded from consideration, and following the precedent of the Full Bench case in 9 Weekly Reporter I referred to above, the present appeal should be disposed of on the basis of the opinions of the remaining members of the Bench.

As such opinions are equally divided, it should perhaps be our duty, if clause 36 of the Letters Patent applies, to state the points upon which we differ. They are the points covered by issues 4 and 5 of the suit



MR JUSTICI LODGI

LODGE, J'S JUDGMENT

LODGE, J —The material facts giving rise to this litigation are briefly these

Ramendra Narayan Roy was the second son of Raja Rajendra Narayan Roy of Jaidebpur in the district of Dacca. On the death of Raja Rajendra Narayan Roy, Ramendra and his two brothers Ranendra Narayan Roy and Rabindra Narayan Roy succeeded jointly to the very large estate known as the Bhowal Raj Estate. At the time when this story opens all three brothers were alive. Ramendra Narayan Roy was suffering from syphilis. He visited Calcutta during the cold weather of 1908-09, and apparently during this visit, it was arranged that Lord Kitchener, who was the Commander-in-Chief in India, should visit Jaidebpur for a shoot.

After Lord Kitchener's visit, Ramendra Narayan Roy decided to go to Darjeeling for a change. He was accompanied by his wife, Bibhabati Devi, and her brother Satyendranath Banerjee. The party also included Mukunda Guin, Private Secretary of Ramendra Narayan Roy, and Dr Ashutosh Das Gupta, the family physician, and a large number of servants. The party stayed at a house called "Step Aside" which had been taken for a period of three months.

They arrived in Darjeeling on April the 20th, and shortly after their arrival Ramendra Narayan Roy fell ill. The exact nature of his illness is disputed, but it was sufficiently serious to induce Dr Ashutosh Das Gupta to call in Dr Calvert, Civil Surgeon of Darjeeling, in consultation. Dr Calvert came on the morning of May 6th. At some time on the night of May 8th, 1909, Ramendra Narayan Roy was taken for dead, and on the following morning, a body said to be his was taken out in procession and was burned to ashes at the Hindu cremation ground.

The remaining members of the party left Darjeeling on the tenth of May on their return to Jaidebpur.

One day in the cold weather of 1920-1921, the present plaintiff appeared on the Buckland Bund, Dacca, in the guise of a sannyasi, with matted hair and ash-besmeared body, and naked save for a loin cloth. He remained on the Buckland Bund for some weeks, staying out in the open in all kinds of weather, seen and consulted by hundreds of people. In the month of May, 1921, on the fourth of the month to be exact, he declared to a gathering of relatives of the Jaidebpur family and villagers that he was Ramendra Narayan Roy who was thought to have died at Darjeeling in 1909.

PLAINTIFF'S CASE

The questions in issue in this appeal are, whether the plaintiff is indeed Ramendra Narayan Roy, son of Raja Rajendra Narayan Roy of Jaidebpur and whether the suit is barred by limitation. The plaintiff's case is that his brother-in-law Satyendranath Banerjee conspired with the Secretary Mukunda Guin and Dr Ashutosh Das Gupta to poison him. In furtherance of this conspiracy, Dr Ashutosh Das Gupta administered some poison to the plaintiff on the night of May 7th, 1909. Thereafter all the symptoms of arsenic poisoning developed, and the plaintiff collapsed and was taken for dead about dusk on May the 8th. Arrangements were at once made for the cremation

and the plaintiff's body was taken from "Step Aside" at about 9 P.M. to the cremation ground. Just as the funeral party reached the cremation ground, there was a violent storm. Everybody fled, leaving the body still tied to the cot on which it had been carried. Fortunately, four naked sannyasis were sheltering in a cave near the cremation ground. They had heard the cries of 'Haribole' as the funeral party were approaching the cremation ground, and were surprised at the sudden cessation of the cries. One of them came out of the cave to see what had happened. He heard a sound like a moan or groan coming from the cremation ground and went to see what it was.

Then all four sannyasis went to the spot, and found that plaintiff was still alive. They untied the ropes which bound him, and carried him to their cave. Then in fear lest the funeral party should return, they decided to leave the cave and take shelter in a hut further down the hill. They carried the still unconscious plaintiff down the hill to another hut. These sannyasis nursed the plaintiff back to life. They remained near Darjeeling for about a fortnight, and thereafter, accompanied by the plaintiff, continued their wanderings through the length and breadth of Northern India. The plaintiff soon recovered physically, but when he became conscious it was found that he had completely lost his memory. He had no idea of his identity, his home or his condition in life. In fact he became like a child again.

After wandering for about a year, plaintiff recovered to the extent that he was to all outward appearance a normal adult except in one respect: all memory of events before his cremation and rescue had been completely wiped out.

In this condition he wandered for many years in the company of the sannyasis. Suddenly one day he remembered that his home was at Dacca, and told this to his Guru. The Guru at once assumed that plaintiff's memory was entirely restored, and advised the latter to return to his home and his relatives. Thereupon plaintiff left the sannyasis and started home for Jaidebpur. In this condition he reached Dacca and took up his position at Buckland Bund. While at Dacca his memory was completely restored.

Even after his memory was restored, he was at first reluctant to reveal his identity. He visited Jaidebpur and stayed for some days at the house of Jyotirmoyee Devi, the second daughter of the late Raja Rajendra Narayan Roy. Jyotirmoyee Devi and other members of the family recognised him and pressed him to admit that he was Ramendra. Ultimately on the fourth of May, 1909, plaintiff yielded to their entreaties and admitted his identity.

The plaintiff's further case is that his wife Bibhabati Devi is aware of his identity, but, in order to shield her brother Satyendranath Banerjee, is falsely denying that plaintiff is her husband.

DEFENDANTS' CASE

The defendants are Sarajubala Devi, widow of Ramendra Narayan Roy, Bibhabati Devi, *sor disant* widow of Ramendra Narayan Roy, Ananda Kumari Devi, widow of Rabindra Narayan Roy, and Ram Narayan Roy who was adopted by the above Ananda Kumari Devi as son to her deceased husband Rabindra Narayan Roy. All four defendants were ultimately represented by their guardian, the Court of Wards, though one of them, Sarajubala Devi, supported the plaintiff's claim and deposed in his favour. The other three defendants opposed the plaintiff's claim and asserted that he was an impostor set up by Jyotirmoyee Devi, daughter of the late Raja Rajendra Narayan Roy and by other designing persons.

The defendants' case is that Ramendra Narayan Roy was suffering from biliary colic when at Darjeeling and that Dr Calvert was called in to treat him. Dr Calvert wished to give morphia injections when the spasms of pain came on, but Ramendra Narayan Roy refused to have an injection because of his belief that his mother's death had been caused by such an injection. On account of his obstinate refusal, adequate measures to relieve the pain could not be taken in time. Ramendra Narayan Roy ultimately consented to the injection, it is true, but the pain had been so severe that he collapsed and ultimately died just before midnight on the eighth of May. It was too late to cremate the body that night, and accordingly, the body was taken out in procession on the following morning and burned to ashes after the usual ceremonies had been observed. The further case for the defendants is that the plaintiff is a Punjabee who was unable to speak Bengali when he first appeared at Jadebpur in the year 1921, and they have attempted to prove that his real name is Mal Singh of Aujla in the Punjab. A more detailed statement of the case for the parties will be given as the evidence regarding each group of incidents is discussed.

The suit was filed in the court of the Subordinate Judge at Dacca. Mr Panna Lal Basu was specially selected to hear the suit. During the hearing Mr Panna Lal Basu was promoted to the rank of District Judge and appointed to be Additional District Judge of Dacca. The suit was accordingly transferred to the file of the Additional District Judge and the hearing continued before Mr Panna Lal Basu as before. This transfer explains the re-numbering of the documentary exhibits in the case.

The learned trial judge in a detailed and carefully written judgment came to the conclusion that the plaintiff's claim was true and decreed the suit with costs. Against that judgment and decree, three of the defendants have appealed. The appellants are—

Bibhabati Devi, *soi-disant* widow of Ramendra Narayan Roy,
 Ram Narayan Roy, adopted son of the late Rabindra Narayan Roy, and
 Ananda Kumari Devi, widow of the late Rabindra Narayan Roy.

The remaining defendant, Sarajubala Devi, widow of the late Ranendra Narayan Roy, has been made a pro-forma respondent in the appeal.

LIMITATION

As stated above, the second question in issue in this appeal is the question of limitation. In view of my findings on the question of identity, it is not necessary for me to deal at length with the question of limitation.

Suffice it to say that, in my opinion, a Hindu woman in possession of property of her husband in the honest belief that her husband is dead and that her possession is that of a Hindu widow, must be regarded as in possession on behalf of her husband, if that husband is in fact alive. In this view, if plaintiff is indeed Ramendra Narayan Roy he must be regarded as having been in possession of his share until his identity was denied. The suit was instituted with 12 years of that denial, and therefore, in my opinion, was not barred by limitation.

ATMOSPHERE AT DACCA DURING TRIAL

In opening the appeal before us, Mr Chaudhuri, counsel for the appellants, asserted that during the trial in the lower court, the precincts of

the court were crowded daily with a mob of enthusiastic supporters of the plaintiff who made no attempt to hide their approval or disapproval of each piece of evidence as it was given hostile demonstrations against counsel for the defence and the defence witnesses were of frequent occurrence news sheets were printed daily in the town of Dacca, and these sheets often contained offensive lampoons on the supporters of the defendants

Mr Chatterjee, counsel for the respondents, has not denied the accuracy of this description It is clear that such an atmosphere was not conducive to a calm judicial determination of the issues involved Passions were aroused, and feelings ran very high Either for this reason, or perhaps because the parties were uncertain at the beginning, what facts they would challenge and what they would admit, every statement made by one party was flatly contradicted by the other, whether the statement was of importance or not Evidence was adduced in support of assertion and contradiction without any consideration of its relevance and importance As a consequence hundreds of witnesses were examined whose depositions cumber the record without adding in any way to our knowledge of the material facts

DIFFICULTIES CREATED BY THE PARTIES

It is obvious that if the evidence of recognition or non-recognition given by intimate friends of Ramendra Narayan Roy fails to carry conviction, the evidence on the same point given by tenants who had few opportunities even of seeing Ramendra, and no opportunities of intimate association with him cannot add anything to our knowledge Yet tenants have been examined in hundreds either to shew that plaintiff is exactly the same in appearance as Ramendra Narayan Roy, or to show that there is no resemblance whatever This accumulation of unnecessary evidence has merely added to our difficulties in coming to a proper conclusion Another of our difficulties was also created by the parties to the suit It is clear from the documentary evidence produced that officers of the Court of Wards, employed in the management of the Bhowal estate, attempted to bring pressure to bear on employees and tenants of the estate to defer them from supporting the plaintiff and from deposing in his favour Attempts were also made to win over those who had already joined the plaintiff's party Conduct of this nature merits the severest condemnation, and in view of these facts, it is impossible to attach any value to the evidence of those tenants and employees of the estate who have deposed against the plaintiff It is clear that it was to their advantage so to depose

The suggestion, however, that the estate was not justified in dismissing from service those employees who openly supported the plaintiff, nor in instituting certificate proceedings against tenants who were in arrears with their rent and who supported the plaintiff, seems to me quite unreasonable I cannot understand the argument that an employer of labour is morally bound to retain in his service an employee who openly supports a pretender and who acts against the interests of his own employer Nor can I understand the argument that a tenant who has the money with which to pay his rent, but who gives that money to a pretender to the estate and then defaults in payment to the owner in possession, is entitled to any consideration from the latter There can be no possible doubt that agents of the defendants behaved most improperly in attempting to prevent people from deposing on behalf of the plaintiff, but it would be a mistake to assume that they were the only sinners in this respect Witnesses who ventured to depose on

behalf of the defendants were subjected to insult both inside and outside the court. Offensive questions were put to them in cross-examination for which there was no justification whatever. Charges of sodomy, lechery and conspiracy to murder were recklessly levelled at them. The inference is that there was a deliberate attempt by these means to deter witnesses from deposing for the defendants.

In this as in other respects, it seems to me that both parties were guilty of serious misconduct. Neither party came into court with clean hands. In this view of the case I am unable to hold that the misconduct of a party is an indication of the falsity of that party's case. The misconduct to which I have referred has added considerably to our difficulties. It does not indicate in any way, on which side truth lies.

TRIAL COURT'S UNSATISFACTORY MODE OF APPROACH

Before dealing in detail with the evidence about particular incidents, I desire to make a few observations on the manner in which the lower court approached the problem and the reasons why I consider that approach unsatisfactory, and in doing so, I think it desirable to indicate generally, why I am unable to accept the learned judge's estimate of the credibility of witnesses. One of the outstanding features of this case is the fact that Jyotirmoyee Devi has accepted the claimant and has acknowledged him to be her brother Ramendra. Since 1921 Jyotirmoyee Devi has lived in close contact with the plaintiff and has had innumerable opportunities of testing his claim. After living with him for more than a dozen of years she has deposed unhesitatingly to the effect that he is indeed her brother Ramendra. There can be no doubt that this evidence is the strongest evidence in the plaintiff's favour. It is difficult to believe that a sister could possibly live for twelve years in the same house with a man who claimed to be her brother without finding out whether his claim was true. Mr Chatterjee for the respondents has gone so far as to argue that if Jyotirmoyee Devi's evidence was honestly given, it was sufficient to establish beyond doubt the truth of the plaintiff's claim. The learned trial judge was not prepared to accept this argument, but he did concede that if Jyotirmoyee Devi was honest, her evidence would go a long way to establish plaintiff's claim. In the circumstances, the question whether or not Jyotirmoyee Devi was honest in her deposition, is one of the greatest importance.

HONESTY OF JYOTIRMOYEE DEVI

An appellate court is at an obvious disadvantage compared with a court of first instance, in attempting to decide whether a witness was deposing honestly or not. The court of first instance has the advantage of watching the witness as he or she gives her evidence and observing the manner in which the evidence is given. It is not possible to note down all the details which go to impress the court in favour of the witness or against him. An appellate court will, therefore, hesitate long before deciding that a particular witness who has been believed by the court of first instance, has not deposed honestly.

As the learned trial judge has believed the evidence of Jyotirmoyee Devi, it is incumbent on this court as an appellate court carefully to examine the reasons given by the learned judge before rejecting his conclusions

NO ADEQUATE REASONS FOR ACCEPTING HER EVIDENCE

The learned judge gave three principal reasons for believing Jyotirmoyee Devi's evidence. Firstly, he thought that the possibility of a Brahmin lady supporting the claim of an impostor to be her brother was so remote as to be almost incredible, secondly, he thought that there was no opportunity for Jyotirmoyee Devi and her associates to hatch the conspiracy alleged by the defence, and thirdly, he was impressed with the manner in which she gave her evidence. I propose to examine these reasons with some care.

It must be remembered that both parties have put forward stories which are strange and unusual, if the plaintiff is indeed Ramendra Narayan Roy, it follows that there must have been a conspiracy between his own secretary, his own private physician and his own brother-in-law to murder him, there must have been an apparent death and an almost miraculous resurrection, there must have been an extraordinary rescue and an unaccountable loss of memory, there must have been a most unusual sham cremation on the following morning, and finally, there must have been demal by a Brahmin lady of her own husband. Such a sequence of events is undoubtedly sufficiently rare to justify the description improbable.

On the other hand, if the plaintiff is an impostor, it follows that Jyotirmoyee Devi and her associates must have conspired to set him up. They must have undertaken to coach him in the part he was to play, and to persuade the world that he was the real Kumar. This too seems improbable in the extreme.

Where one of two parties puts forward a story which is outside the ordinary course of human experience, and the other party maintains that things happened in a perfectly ordinary normal manner, the mere improbability of the one story may justify its rejection. But, where the alternative to one improbability is another equal, or even greater, improbability, the mere strangeness of the story is not sufficient reason for its rejection.

In the present case the learned trial judge dealt first with the evidence of recognition. In this connection he noted the improbability of Jyotirmoyee Devi conspiring to set up an impostor, but he failed to compare this improbability with the improbability of the plaintiff's story. He failed to notice that the alternative was another improbability as great, if not greater. It is true that when the learned judge came to discuss other parts of the evidence he noticed the improbability of the plaintiff's story, but having by then accepted the plaintiff's identity as established, he was constrained to believe the story however improbable it seemed.

As the learned judge made no attempt to compare the two stories and decide which was the less improbable, the argument that Jyotirmoyee Devi's evidence was worthy of belief because otherwise her conduct was so unusual as to be considered improbable is obviously fallacious.

The second argument advanced by the learned judge was that there was no time in which to hatch out such an elaborate and daring plot. This argument is based on the assumption that neither Jyotirmoyee Devi nor her associates could possibly have thought of this plot until after the plaintiff's second visit to Jaidebpur commenced. This assumption is wholly unjustified. There is nothing in the circumstances of the case to preclude the possibility

that the plot in its main outlines had been decided on before even the plaintiff set foot in Jaidebpur. The mere absence of evidence to show that conspirators were plotting, is no proof that they could not possibly have been so engaged. When I discuss the evidence on this point, I shall have occasion to point out that there was certainly sufficient opportunity for the conspirators to develop their plot.

The third argument—and ordinarily the most difficult argument for an appellate court to reject—was that the evidence of Jyotirmoyee Devi impressed the learned judge as honest evidence. But on closer examination, this argument too is found to be unconvincing. An appreciable part of Jyotirmoyee Devi's evidence related to the rumours said to be current in Jaidebpur between 1909 and 1921 to the effect that Ramendra Narayan Roy was alive and wandering about in the company of sannyasis, and to steps taken by members of the family to verify these stories. Jyotirmoyee Devi described how messengers were sent in many directions to find her brother, and how these messengers returned with definite and convincing evidence of his survival. She added that from the information so obtained she was convinced that her brother was alive, long before the plaintiff's appearance in Dacca, and it is obvious that if her evidence regarding these searches and the reports of her agents is true, she must have been absolutely convinced that her brother was alive. The learned judge, however, has found definitely that whatever rumours were current, they produced no action whatever, and that Jyotirmoyee Devi did not really believe that her brother was still alive, she merely hoped against hope.

Implicit in these two findings of fact is the third finding that Jyotirmoyee Devi was not always truthful and that she was quite capable of giving false evidence if she thought it necessary. In other words, the manner in which she deposed did not convince the learned judge that she was invariably truthful. He drew his conclusions regarding her veracity not from her manner, but from the substance of her evidence. We are in as good a position to appreciate the substance of her evidence as was the lower court, and we need not start with the handicap of a finding based upon her attitude in the witness box, which we could not verify.

DIFFERENTIAL TREATMENT OF EVIDENCE ON EITHER SIDE

In this connection, it is desirable to point out that the learned trial judge did not apply the same standard to both sides in estimating the value of their evidence.

In cross-examination of Satyadhenu Ghosal, counsel for the defence put the question "That is, you found him to be a well-educated, well-polished young Bengalee aristocrat?" It is now virtually conceded that this was much too high an estimate of the education and culture of Ramendra Narayan. The learned judge noted that a number of witnesses were examined for the defence to support this exaggerated estimate and held rightly that their evidence was untrue to the knowledge of the party producing them. The learned judge not without reason took the view that this conduct in deliberately adducing false evidence must raise a doubt as to the veracity of the defence evidence on other points.

The learned judge also noticed that the plaintiff himself gave evidence which could not possibly be true, e.g., to the effect that he could not count, and that witnesses were examined on his behalf to support this untrue state-

ment In other words, the plaintiff's party were guilty of a similar offence to that committed by the defendants This is merely an illustration It is impossible to read the evidence on either side without coming to the conclusion that each party deliberately adopted a false standard, in the one case too high, in the other too low—and adduced false evidence to prove their case and a perusal of the judgment shews that the learned trial judge was well aware that this was so

Proved perjury on the part of some defence witnesses was held to justify suspicion regarding the veracity of other defence witnesses But similar proved perjury on the part of some witnesses for the plaintiff was regarded as an inexplicable phenomenon not only did it furnish no justification for suspicion regarding the veracity of other witnesses for the plaintiff, it did not even affect the credit of the witnesses who committed the perjury

This difference in treatment—this application of different standards to the evidence according as it was given in support of the plaintiff or of the defendants—is noticeable throughout the judgment, and detracts considerably from the value of the learned judge's estimate as to the reliability of the various witnesses

ORDER OF TREATMENT

A problem that presents itself at the very outset, is In what order shall we deal with the incidents in this case and the evidence relating to them?

The learned trial judge, after setting out in full detail the history of the family and the allegations of the parties, dealt first with the evidence of identification, and noted that almost all the relatives of Ramendra Narayan Roy have accepted the plaintiff Thereafter he considered the evidence of identity of physical characteristics, noted that some marks on the plaintiff agree with marks known to exist on Ramendra Narayan Roy and held that no difference between the two had been proved which could not be explained by the mere passage of time The learned judge next considered the evidence of mental identity and last of all, took up the evidence regarding the incidents in Darjeeling in the year 1909

In my opinion this is not the most satisfactory manner of approaching the problem It is obvious that the value of the evidence regarding recognition depends to a very large extent on the honesty of Jyotirmoyee Devi and the members of her family If her acceptance of the plaintiff was honest, that fact alone would go a long way to convince the court of the truth of his case, if her acceptance was found not to be honest, that finding alone would justify the court in scrutinising the other evidence of recognition with a most critical eye

In this view of the case, the whole conduct of Jyotirmoyee Devi from 1909 onwards must be examined in order to determine whether her acceptance of the plaintiff was honest or not it is not sufficient merely to note the improbability of her being dishonest and the manner in which she deposed If, of course, there were convincing evidence coming from independent and reliable sources, of a large number of peculiar physical and mental characteristics of Ramendra Narayan Roy, which agreed (or disagreed) with those of the plaintiff, it would not be necessary to rely on general evidence of recognition But in the present case the independent evidence of such characteristics is exceedingly meagre and far from conclusive

I am, therefore, of opinion that the only satisfactory way of dealing with the different episodes is to take them as far as possible in chronological order, and I propose, therefore, to consider first the evidence regarding the illness of Ramendra Narayan Roy at Darjeeling and the apparent death, next, to consider the evidence of the alleged evening cremation and alleged rescue, and next, the evidence of the admitted morning cremation and the return of the party to Jaidebpur. Thereafter I propose to consider the plaintiff's evidence as to his conduct during the years between 1909 and 1921, and the conduct of the people at Jaidebpur during the same period. Then I propose to consider the evidence dealing with the plaintiff's appearance at Dacca and Jaidebpur and the conduct of those persons who met him and either recognised him or failed to do so. Thereafter I propose to deal with evidence of identity of physical and mental characteristics, and lastly, to consider the evidence adduced by the defence to prove that plaintiff is a Punjabee.

DARJEELING—ILLNESS

The first question for our consideration is, therefore, what was the illness of Ramendra Narayan Roy which caused his apparent death?

The plaintiff's case is that he was not seriously ill at any time before May the 8th. He alleges that he was given some noxious drug on the night of May the 7th, which produced all the symptoms of acute arsenic poisoning and which resulted in his apparent death some time between 7 and 8 P.M. on May the 8th.

The defendants, on the other hand, assert that Ramendra Narayan Roy was suffering from biliary colic from the 6th of May, but that he refused to accept the Doctor's advice and have morphia injections as he was under the impression that such injections had caused his mother's death. The pain from the biliary colic was so great that Ramendra Narayan collapsed and died at about midnight on the 8th of May.

MATERIALITY OF CAUSE OF DEATH

At first sight it would seem to be a matter of no importance in the present case whether Ramendra died of arsenic poisoning or of biliary colic. But though the cause of death does not matter if he did indeed die, the time at which he was taken for dead has turned out to be a matter of the very greatest importance.

It is conceded that Hindus in Bengal have a strong prejudice against keeping the body in the house after death. If a person dies during the night, custom requires that the body should be taken out for cremation before dawn.

This custom is not strictly observed in Darjeeling where the cremation ground is situated at some distance down the hillside, and where the necessary assistance is not so readily forthcoming late at night as it would be in the plains. But even in Darjeeling it is highly probable that the body of a man who had died as early as 7-30 or 8 P.M. would be taken to the cremation ground that same night.

The plaintiff's case is that Ramendra Narayan Roy was taken for dead shortly after 7 P.M. and that his body was taken out from "Step Aside" that same night at about 9 P.M. The defendants on the other hand assert that death did not take place until about midnight and that consequently the body was not taken to the burning ghat until the following morning.

The plaintiff's case is bound up with the story of an evening cremation procession and a rescue by sannyasis during the night. Consequently, the time at which Ramendra Narayan was taken for dead has assumed the greatest importance, and since there is a certain amount of contemporaneous documentary evidence inconsistent with the plaintiff's case as to the time of death, it became incumbent on the plaintiff to shew that the evidence was unreliable. For this purpose, the plaintiff has contended that there was a conspiracy to murder him, and that the conspirators sent false telegrams in order to lull the fears of relatives and to prevent interference, and then procured false certificates and letters containing false statements, in order to cover all traces of their crime.

A discussion as to the cause of death is, therefore, necessary to determine whether there was in fact a conspiracy to murder Ramendra Narayan Roy, and also to determine, if possible, the time at which he was taken for dead.

The direct evidence on the subject is almost wholly one-sided. The only person to give direct evidence on the plaintiff's side regarding the course of the illness prior to the time of apparent death is the plaintiff himself. Other witnesses have been examined to prove statements made by members of the Darjeeling party after their return to Jaidebpur, and medical witnesses have been examined regarding the symptoms exhibited by Ramendra Narayan Roy and regarding the medical treatment prescribed for him.

On the other hand, the defendants in addition to examining two of the doctors who were admittedly in attendance on the patient, have examined a number of members of the household and friends to prove what were the symptoms and what was the time of death.

PLAINTIFF'S OWN ACCOUNT OF HIS ILLNESS

The plaintiff's evidence as to his illness as given in court is as follows:

"At Darjeeling I was keeping well. Then I got ill. I got ill 14 or 15 days after my arrival at Darjeeling. It commenced by my having flatulence at night (পেট ঝাঁপা ছিল). It was towards the end of the night I spoke to Ashu Doctor then about it that night. In the morning he brought a European Doctor. He prescribed a medicine. I took it that day. Next day also I took it, it did me no good. Then at night—(when read over, adds, "at 8 or 9 P.M. 22-12-33)—Ashu Doctor gave a medicine. He gave it in a glass (shows a small glass). It did me no good. As I took it, my "chest" (বুক) burned and I vomitted and I grew restless. These symptoms appeared 3 or 4 hours after I took the medicine. And I began to scream (চিৎকার পাডতে লাগলাম). No doctor came that night.

Next morning I passed blood stools—the motions were in quick succession. My body got feebler. Then I got unconscious. I do not know whether any doctor came to me till that moment."

* * * * *

"About poison I don't know."

* * * * *

"I heard the name of Calvert from Ashu Doctor at Darjeeling This I heard one day before I became unconsciousness (sic) I heard it say to-day The next day I was not unconsciousness (sic) Next day I was not so, but at night Ashu Doctor gave me medicine and I felt the burning sensation in the chest 3 or 4 hours after and said 'Ashu, what have you given me?' Next day I had blood stools and after that I became unconscious When I got the burning sensation I felt vomiting tendency and I screamed and I said 'Ashu, what have you given me?' Next day, as I said, I had blood stools"

* * * * *

DIFFERENT VERSION GIVEN TO LINDSAY

This is the story given by the plaintiff in court, but it is by no means the only account that he has given since his arrival in Dacca in 1921 For some weeks after his arrival, he seems to have been singularly reticent regarding the incidents which took place at Darjeeling Even those relatives of Ramendra Narayan Roy who accepted him from the beginning omitted to question him regarding the past, and outsiders were equally considerate There is in fact nothing on record to shew that he said anything about his illness and rescue at Darjeeling, before his visit to J H Lindsay on the 29th May, 1921

J H Lindsay was then Magistrate and Collector of the district of Dacca In virtue of his office as Collector he was in charge of all Court of Wards' Estates in the district He was therefore directly interested in the affairs of the Bhowal Raj Estate, and in the claim put forward on behalf of the plaintiff

LINDSAY'S MEMORANDUM

On the 29th May, 1921, the plaintiff made a call on J H Lindsay at Dacca It is now admitted that this call was unexpected by Lindsay and was not made in response to any invitation issued by him The plaintiff was accompanied by three friends two of whom were practising pleaders of the Dacca Bar We have to rely on Lindsay for any evidence as to what took place at this meeting Lindsay made a note of the conversation shortly after it occurred That note reads

"The sadhu came to-day about 11 A M with Babu Sarat Ch Chakrabarti, Babu Pearl Lal Ghosh (?) and I think the Kashimpur Manager He said he want (sic) some arrangement made about his estate so that the tenants could be benefited I explained that the Board of Revenue must hold him not to be the second Kumar as they have carried on the work of the estate on that assumption for many years I said he could prove his identity in court in a suit or if he preferred to produce his evidence before me I was willing to record it He agreed to the latter procedure and the pleaders said they would file a petition to-morrow for such an enquiry They asked that the Board might pay the expenses and I replied that if they put in a petition to that effect I would get orders on it

"In reply to my questions the sadhu (second Kumar) told me that he had been ill for 2—4 days of pneumonia before he lost consciousness in Darjeeling. He could not remember the name of the house in Darjeeling where he lived, he went from Jaidebpur to Darjeeling, that he was not ill at Jaidebpur except for a boil just above his right knee which occurred within 10 days of his going, there was no special cause of this boil, he did not remember when he was in Calcutta before that, that he recovered his senses in the jungle in the hills in the presence of one sadhu who has since been his Guru, that the sadhu said he had been senseless for 3—4 days, that the sadhu told him that he had found him lying on the ground as if he had been thrown there and that his body was wet with rain as it had been raining before he found him, that the sadhu did not say whether he found him in the day or night

(Sd) J H LINDSAY,
29-5-1921 "

"The sadhu agreed that the rents should be collected as usual by the estate officers and the pleaders urged that the tenants would have less objection to paying if the receipt were given in Bibhabati's name leaving out that of her dead husband

(Sd) J H L,
29-5-1921 "

In his evidence on commission Lindsay stated that he was conversant with Hindi and Bengali, and that so far as he remembered he wrote out the above note at the time of the interview

When cross-examined, no question was put suggesting that Lindsay was not conversant with Hindi, and the only cross-examination regarding the contents of this note is as follows —

"Q —Did he say he suffered from diarrhoea at Darjeeling?

A —I don't know anything except (shown) "J H L 2" From this document I see I recorded "pneumonia" I have no recollection of doing so

Q —Can you swear you did not commit a mistake here?

A —No

Q —Why did you make this memorandum?

A —I am not sure I wanted to get the man's own statement of his case as early as possible I think that was the idea

Q —I put it to you the memorandum was not made at the time of the interview

A —I think it was It was certainly made the same day I think it was made in my office room at my house "

In re-examination to the question

"Q —In cross-examination it was suggested that in recording that the claimant told you that he had been ill of pneumonia you made a mistake Do you consider it at all probable that you made this mistake? (Objected to)"

the witness answered

"A —No I think it probable that that was the correct name of the disease (Shown J H L, 3) "

The plaintiff's positive evidence regarding this interview is extremely brief he says, "I met Mr Lindsay, Collector of Dacca I met him at his house I went with Peary Lal Ghosh, a resident of Dacca He was a pleader Sarat Chakravarty, another pleader, came with me Rajendra Babu, Zemindar of Srinagar, also came with me" At a later stage, however, he gave a categorical denial to all the statements ascribed to him in Lindsay's note he stated

"It is false that I told Mr Lindsay I had pneumonia at Darjeeling It is false that Mr Lindsay asked me the name of the house at Darjeeling, or that I forgot to give it It is false that I had told him I had an abscess (अभ्र) It is false that Mr Lindsay asked me when I had gone to Calcutta last before going to Darjeeling or that I said I did not remember It is false that I told him that when I returned to consciousness only one sannyasi was present Mr Lindsay, during my interview with him recorded nothing He talked in Hindi I also replied in Hindi "

Of the plaintiff's three companions at that meeting, two, viz, the pleaders Peary Lal Ghosh and Sarat Chakravarty, died before the suit came on for hearing The third companion was summoned to depose as a witness for the plaintiff Later on, an order for his examination on commission was obtained by the plaintiff from the court, but no commission was taken out and the witness was never examined

Lindsay's evidence has been rejected by the learned trial judge on two grounds, viz, firstly, that there is nothing to show how great was Lindsay's knowledge of Hindi, and secondly, that it was unlikely that the plaintiff should use the word pneumonia or that Lindsay should know the Hindi equivalent As pointed out above, Lindsay deposed that he was conversant with Hindi, and he was not cross-examined on the point The plaintiff deposed that he conversed with Lindsay in Hindi, and he did not say that there was anything to suggest at the time that Lindsay could not converse easily with him If there was any doubt as to Lindsay's knowledge of Hindi, it is difficult to understand why the plaintiff did not talk Bengali, a language with which Lindsay must have been familiar

Our attention was drawn to a letter written by Lindsay on 28th August, 1921, to the Divisional Commissioner, in which Lindsay referred to the visit of Dharam Das Naga to Dacca In this letter Lindsay observed, "I think of going down to interview him when Quarry returns from tour on the chance of getting some story out of him that he will have to stick to Quarry knows that up-country language to perfection and will be able to talk to the man much better than I" We have been asked to draw the inference that Lindsay's knowledge of Hindi was very limited In my opinion this remark does not justify the court in holding that Lindsay was unable to carry on a conversation in Hindi with the plaintiff, or to understand all the plaintiff said

With regard to the use of the word "pneumonia", it must be remembered that English words like this are commonly used in India by all class A sannvasi

who was examined by the plaintiff to prove the rescue at Darjeeling, and who claims to have been the plaintiff's companion during many years of wandering, admitted that he knew the word, though he did not speak English. The plaintiff does not state at any time that he was not familiar with the word. The reasons given by the learned trial judge for rejecting Lindsay's evidence on this point, seem to be singularly unconvincing, and even more so is the argument that Lindsay himself was uncertain about the statement because he would not swear that he had not made a mistake.

J. H. Lindsay was a responsible officer. It is true that he had made up his mind before the interview took place that the plaintiff was an impostor, and that to this extent he was biased. But, in spite of this, I am unable to believe that he was capable of deliberately ascribing to the plaintiff statements which the latter had not made, nor do I think it possible that he misunderstood everything that the plaintiff said. I believe that Lindsay's note is a substantially accurate record of the interview, and it follows from this that I believe that the plaintiff, in the first account he ever gave of his alleged experiences at Darjeeling, gave a version materially different from that given by him in the witness box.

STILL OTHER VERSIONS

There have been other different versions given by the plaintiff from time to time. Many of the persons who met the plaintiff after his arrival in Jaidebpur in 1921 noticed a curious impediment in his speech. It has been variously described by the witnesses, but it seems to be merely a sort of hesitation, which does not amount to a stammer, and some witnesses deposed that some of the words sound indistinct. The plaintiff accounts for this impediment by the fact that he has a small cyst on the frenum under the tongue. It seems clear that the plaintiff informed many people that the impediment in his speech and the cyst under his tongue were caused by the poison administered to him. Thus in his memorial he stated that "your memorialist's voice was affected on account of defect in the tongue from arsenic poison at Darjeeling." Witnesses such as Satyadhenu Ghosal gathered from the plaintiff's own account that there was an injury to the tongue caused by the poison administered to him. In view of this evidence, special significance attaches to the evidence of two ladies examined on commission on behalf of the plaintiff. They are Ananta Kumari Devi and Mokshada Devi. They are both ladies of Jaidebpur, intimate with the family and ardent supporters of the plaintiff. They deposed to the effect that on the return of the other members of the party from Darjeeling, Sarif Khan, one of the orderlies, revealed how Ramendra Narayan had been poisoned. Their story deserves to be recorded in their own words.

STORY OF CORROSIVE POISON

Ananta Kumari Devi's account runs

"I knew a man by the name of Sarif Khan. I purchased land from him. He used to come to my house very often. He was the orderly in the Rajbari. Sarif Khan returned from Darjeeling. Thereafter I did neither speak with him nor appear before him. He had a talk with my husband, I overheard from a place outside their view. After his return from Darjeeling my husband had talks with Sarif Khan. When Sarif Khan was having talks with my

husband, my maid-servant came to me and said, "Come and hear what Sarif Khan is saying" Thereupon I began to overhear them from behind the panel of a door

Q—What did he say? (Objected to)

A—My husband said, "Sarif, you went to Darjeeling with the "Mejo Khoka," what happened? Will you disclose the matter to me?" At this Sarif beating his head and breast began to say, "Babu, what shall I say? My heart breaks down to tell that" (He spoke in Hindi, then I could understand)

"A poison or something like that was administered to Mejo Karta, saliva began to ooze out of his mouth, just see it had fallen on my cloth, please look here, my cloth has been burnt, a blister has formed on my thigh by its falling upon it" saying this he showed a burnt place in the cloth and the blister I also saw that from a place outside their view (Objected to)"

Mokshada Sundari Devi's account is very similar, viz —

"Sarif Khan went to Darjeeling with the Kumar After his return from Darjeeling, Sarif Khan went to see Satyabhama Devi I was present there then Satyabhama Devi asked Sarif Khan while weeping "Where and how have you left the Khoka?" Sarif Khan while striking his head said, "Raja had said to me, let me and you go to Jaidebpur with your mother, without informing my brother-in-law" Then he said, "Satya Banerjee was present there, Ashu doctor administered the medicine to him, some portion of the medicine the second Kumar took and some portion he sputtered away, with the sputtering of the medicine the Kumar said 'What have you administered, what have you administered' Some portion of that medicine fell on the Kumar's bed, and as Sarif Khan was in front of it some portion fell on the cloth he was wearing and on his garment" He showed his cloth and garment which seemed to bear marks of scorching at places"

These two ladies were examined on commission in the year 1931 It is obvious from the record that some time after that, new advisers were called in by the plaintiff The result appears in the examination of Jyotirmoyee Devi, Jitendra Chandra Mukherji and Satinath Banerjee regarding this incident They refer to the incident but do not say anything about the burns shewn by Sarif Khan, and they add that they regarded his account as highly coloured

It seems to me clear that the story was given out at one time that some corrosive poison was administered to Ramendra Narayan Roy at Darjeeling, and further, that these ladies Ananta Kumari Devi and Mokshada Sundari Devi were induced to give false evidence in support of the story In other words, another story different from that given in court, and different from the one given to J H Lindsay, has been given out by the plaintiff or his advisers

PLAINTIFF'S EVIDENCE WHOLLY UNRELIABLE

From this discussion it is clear that at least three different stories have been given out by the plaintiff regarding the illness and the cause of apparent death at Darjeeling This proves that the plaintiff himself is wholly unreliable as a witness, and it follows that the court is not justified in arriving at any conclusion as to the events at Darjeeling relying only on the plaintiff's testimony But the fact that the plaintiff is an unreliable witness is not proof that he was not poisoned, nor is it proof that there was no conspiracy

to poison him. If the plaintiff can show from the defendant's evidence that there must have been a conspiracy or that he must have been poisoned with arsenic, he is quite at liberty to do so, and this, in fact, is what Mr Chatterjee has attempted to do on his behalf.

DEFENDANTS' EVIDENCE IN CHRONOLOGICAL SEQUENCE

To appreciate this part of the discussion it is necessary to set out fully the material at the disposal of the court, from an examination of which an inference is to be drawn.

With regard to the symptoms shewn by Ramendra Narayan Roy during the course of the illness and the events which led to his apparent death, we have the evidence of Dr Calvert, Civil Surgeon of Darjeeling, who was admittedly called in to see Ramendra Narayan Roy on the 6th of May, 1909, and who was admittedly present during part of the day on which death is said to have occurred. We have also the oral evidence of Dr Ashutosh Das Gupta, the family physician of Ramendra Narayan Roy, who was a member of the Darjeeling party. We have also the oral evidence of other members of the household and also of Jagat Mohini, the district nurse, who was called in to nurse the patient shortly before his apparent death.

In addition to the above evidence, we have the telegrams sent from Darjeeling to Jaidebpur as the illness progressed, and also copies of the prescriptions drawn up by the attending physicians. Added to these, are two letters written by Dr Calvert after the supposed death and also a certificate of death granted by him to enable the widow to claim from an Insurance Company the amount due under a policy in Ramendra Narayan Roy's name. It seems to me desirable to set out this evidence in the order in which it came into existence, adding at present only such comments as will make the case of the parties clear.

6TH MAY

It is now admitted that the first symptoms of trouble appeared in the small hours of the morning of the 6th of May—a time which would be treated by Indians in general as part of the 5th of May.

At some time in the morning of the 6th of May, Dr Calvert was called in. He saw the patient and prescribed a carminative and some lint open for external application. The prescription is *Ex 51* in the case and is in these words:

"Re

Spt Amon Aromat	3iii
Sod _i Bicarb	3i
Tinct Card Co	3vi
Spt Chloroform	3iss
Aqua Cinamon	ad 3vi
Mft mixt	
3i—one mark every 2 hours	

Re

Lant opu

311

For external application

Sd /- J T C"

On this day three telegrams were sent from Darjeeling to Jaidebpur The first signed by Mukunda Guin, the private secretary, runs

"Last night Kumar had fever below 99 no anxiety no fever now kindly with (sic) health

Sd /- Mukunda",

and was despatched at 10 A M The second was sent at 6-45 P M and was in these words

"Kumar attacked fever yesterday with severe stomach pain Civil Surgeon attending "

The sender of the telegram was a man named Cabral, who seems to have been a kind of upper servant As Cabral was illiterate, the message must have been written by some one else The third telegram was sent by Mukunda Guin at 8-55 P M and reads

"Fever abdominal pain lasted two hours now remission no anxiety no fear of recurring

Mukunda "

We have another piece of evidence which appears to refer to this day It appears that for reasons which will be discussed later, Satyendranath Banerjee began to keep a diary from about the 22nd or 23rd of May, 1909 He made entries under several dates earlier than the date on which he actually commenced to write The first such entry is under the head May the 7th and reads

"Ramendra's illness continues, pain in stomach with slight fever No sleep last night Wired home for fruits, etc "

This was not written on the day to which it refers, nor on the following day, but it was written about a fortnight later It may easily be that there is a mistake in the entry as to the date when a sleepless night was passed, as this entry does not agree with the telegram sent on the 7th nor with the oral evidence in the case

No wire asking for fruits, etc , is forthcoming

It is difficult to explain this entry other than as a mistaken one Though the statements in it are seen to be incorrect, it is difficult to imagine any sinister reason for deliberately making incorrect entries I am, therefore, of opinion that this entry cannot be relied on as a safe guide to Ramendra Narayan's condition

7TH MAY

With regard to the events of the 7th May there is much controversy There is no prescription by Dr Calvert for that date, and consequently there is no documentary evidence to shew whether he visited the patient on that day The oral evidence is contradictory, but most of the witnesses who depose on the point assert that Dr Calvert did come Their evidence as to the

time of his visit is very conflicting The only telegram sent on that day was despatched at 7-10 A M and was signed by Mukunda Guin It stated that the "Kumar had good sleep last night no fever no pain"

On this date, Dr Ashutosh Das Gupta, the family physician, made the prescription round which the whole controversy has raged

The prescription is *Ex 51 (a)* and is as follows

Re—

Quinine Sulph	Gr 1v
Alom	Gr ½
Ext Nux vomica	Gr ½
Euonymin	Gr 1
Acid Arsimor (Arsenius)	Gr 1/100
Ext Gent	Grs
Impt Pill (silver) 1 T D S P C	

Sd /- A T Das Gupta

On this day occurred an incident which seems to me very significant Hitherto Ramendra Narayan Roy had been sleeping in his own bedroom which was the third room from the south, on the first floor of the house On this day, a bed was made up for him on the floor of an adjacent room, and from then until he was carried out for cremation, he slept in this room There is some confusion as to the time when this change of rooms was made At first Satyendranath Banerjee said that it was made in the day time, but when he was cross-examined on the point, he stated that the change was made because Ramendra Narayan Roy had been rolling in agony in his bed and his usual bed was too narrow On further cross-examination, he admitted that Ramendra Narayan did not roll about in agony on the 7th at least before evening, and he stated that even then Ramendra was not exactly rolling in agony, but he was restless and in pain From this it is argued that the change of rooms must have been effected after dusk

This argument receives some confirmation from the evidence of Shyamadas Banerjee, who said that the room was changed 'perhaps on the previous day', and added that he saw Ramendra Narayan in the second room for the first time on the morning of the day of death The witness is very vague on the subject, and I am not convinced that he has any clear recollection as to the time of change However, it seems to be the common case of the parties that the change of rooms was made on the 7th of May, either in the day time or after dusk

8TH MAY

On the 8th of May we have three telegrams from Darjeeling to Jaidebpur and one from Ranendra Narayan Roy at Jaidebpur to Darjeeling There are four prescriptions for this day, two by Dr Calvert and two by Dr Nibaran Chandra Sen, who was the medical officer in charge of the Darjeeling hospital and who had been called in with Dr Calvert The first telegram of the day was despatched at 7-20 A M and is in these words

"Had fever slight pain yesterday now normal no anxiety

Ashutosh"

The sender was apparently Dr Ashutosh Das Gupta, the family physician

The first prescription for the day is *Ex 51 (e)* and bears Dr Calvert's initials It is as follows

"Re—

Mag carb

Sodi bicarb

Bismuth Carb

Pulv Tragacanth Co

aa ʒi

Oil cajuputi

m xii

Aqua menth pip

ad ʒvi

T D S

Sd /- J T C "

The plaintiff's case is that Dr Calvert made this prescription without seeing the patient, and on receipt of the report of some messenger from the house The defendants on the other hand assert that Dr Calvert saw the patient on the morning of the 8th May before making this prescription

A second telegram was sent to Jaidebpur at 11-15 A M to this effect, viz ,

"From—Darjeeling

To—Hon'ble Kumar, Jaidebpur, E B

Date 8th May, 1909

Time—11-15 A M

No fever slight pains vomiting tendency Civil Surgeon attending no anxiety coming giving rice wire 1,000 passage

Sd /- Mukunda "

Thereafter follow three prescriptions, viz ,

Ex 51 (b)

"Re—

Sodi Citrate

ʒi

Aqua Sterilised

ad ʒvi

ʒi with milk as directed

Re—

Glycerine pepsin

ʒii

As directed

Re—

Pep Powder fresh

Re—
 Atropia Tab Gr 1/100
 Strych Tab Gr 1/30
 Digitalin Tab Gr 1/100
 Ether pure ½ oz
 Morphia Tab Gr 1/8
 Sd /- N C Sen "

The latter part of this is not a prescription, but is an order for a number of different drugs—which apparently were to be kept ready for an emergency

Ex 51 (c)

"Re—
 Spt Ether ʒiv
 Spt Amon Aromat ʒiv
 Aqua Camphor ad ʒviii
 ⅓ for a dose
 Sd /- J T C

Re—
 Ext opii
 Belladonna
 Saponis ad Gr ⅓
 Impt Pill send 6 such 1 T D S

And Ex 51 (d) Sd /- J T C "

"Re—
 Lint Saponis
 Sinapis Co ad ʒii
 To rub all over the limbs with ginger powder

Re—
 Lint Chloroform—
 Belladonna ad ʒii
 To be applied over the stomach

Re—
 Spongis Lelini 12" × 12"
 Sd /- N C Sen "

The times at which these prescriptions were made is disputed. It is the common case of the parties that at some time on the morning of May the 8th Ramendra Narayan Roy had a number of liquid motions in which there was fresh red blood. The plaintiff's case is that these motions occurred in the

early morning before Dr Calvert's visit, and his further case is that the earlier liquid motions were not shewn to Dr Calvert, but that only the later motions, consisting of blood-stained mucus, were shewn

The defendants maintain that these motions first occurred at about 12 noon after Dr Calvert's first visit, that all but the first one or two motions were kept for Dr Calvert's inspection, and that the secretary, Mukunda Guin, was sent out in haste to recall Dr Calvert shortly after these motions first occurred. The defendants allege that Mukunda Guin followed Dr Calvert from place to place until at last he found him and brought him to "Step Aside" at about 2 P M

A telegram was sent to Jadebpur at 3-10 P M which reads

"Kumar is seriously ill frequent watery motions with blood come sharp

Mukunda."

After the arrival of Dr Calvert and Dr Nibaran Sen, two nurses were brought from the hospital to nurse Ramendra Narayan Roy. They seem to have arrived at "Step Aside" after 4 P M. In spite of the medical attention and care Ramendra's body became colder until at last he collapsed and (apparently) died. The time of his apparent death is disputed, and there is also a dispute whether any injection of morphia was given to him that day.

At 4-45 P M that day a telegram was despatched from Jadebpur over the signature of Ramendra's elder brother. It was to this effect—

"To

Kumar Ramendra

Very anxious wire condition, very often treat with best medical help wire immediately present condition

From—Ranendra

8-5-09 "

I do not propose to refer at this stage to the evidence of those witnesses who deposed that they heard of the death of Ramendra Narayan at 8 or 9 P M, nor to the evidence of witnesses who stated that they accompanied the body to the burning ghat that evening. Their evidence will be discussed when I consider the question of time of death and the story of the alleged attempt to cremate the body during the night. Their evidence throws no light on the problems of the cause of death and the existence of a conspiracy to commit murder. For the same reason I shall not discuss here the visit of Dr B B Sarkar.

9TH MAY

On the morning of the 9th of May a body was admittedly taken from "Step Aside" to the cremation ground and burned to ashes. Before the procession started, a doctor, who was living close by, was called in. His name is Pran Krishna Acharyya. I shall have to examine his evidence in some detail when considering the story of the morning cremation, but I shall anticipate the result of that examination, by saying that he was called to

"Step Aside" on the morning of the 9th of May by somebody who has not deposed in the suit. What message was given to Dr Acharyya is uncertain, but Dr Acharyya was under the impression that his professional services were required. Dr Acharyya approached the body to examine it, when some one standing near objected on the ground that Dr Acharyya being a Brahmo might not touch the dead body of a Brahmin. Dr Acharyya was naturally annoyed, and he turned on his heel and left the place. The defendants do not dispute Dr Acharyya's visit, though none of the witnesses for the defence have retained any recollection of it. The plaintiff has argued that Dr Acharyya was called in either to give a certificate of death or in the hope that he would certify without examining it, that the body was that of Ramendra Narayan Roy.

10TH MAY

On May the 10th, the Darjeeling party made preparations for their return to Jaidebpur. If we can trust the entry in Dr B B Sarkar's diary, Mukunda Gum went round paying the doctors. On the same morning, somebody approached Dr Calvert and persuaded him to write the following letter of condolence to Ranendra Narayan Roy —

"1, Monteagle Villa,
Darjeeling,
10th May, 1909

"My Dear Kumar,

Please accept my most sincere condolence in the great loss which you have sustained through the death of your kind-hearted and amiable brother. I am afraid that this sudden death must be attributed to a little over-confidence on his part regarding the nature of his illness and its probable termination. The morning I was called in he felt so much better that he declined the treatment I proposed, even the earnest solicitation and exhortation of his private secretary and friends who were most solicitous concerning his condition failed to move him. Later in the day he had a relapse, the colic coming on in a most intense form. His Secretary with praiseworthy zeal himself went round the station until he had found me on my rounds and secured my early attention to the case. This time he listened to the advice of the Secretary and his friends and allowed me to adopt the right treatment. The colic quickly ceased under hypodermic medication, but unfortunately the system had received such a shock in the interval that he sank and died from collapse in spite of all our endeavours. All that was possible was done to save your brother's life and he received the greatest care and attention from those about him. It would have been a great boon if he could have had his friends around him, but the exacerbation of his illness came on so suddenly and terminated so quickly that it was not possible. He had had milder attacks of this nature before, and it was his recovery from these which prevented him realising the serious nature of the last one before it was too late.

Yours sincerely,
J T CALVERT "

CREMATION AND DEATH CERTIFICATES

In July of that year steps were taken to obtain certificates of death and cremation to enable the persons interested to obtain from the Insurance Company the money due on a policy under which Ramendra's life had been insured. Among other certificates is one from Dr Calvert, dated the 7th of July, 1909. That certificate reads as follows:

"Certificate A

Policy No 74789

Life—Kumar Ramendra Narayan Roy

Claimant—Rani Bibhabati Devi

CITY OF GLASGOW LIFE ASSURANCE COMPANY

Certificate of Death

To be granted by the Medical Practitioner who attended deceased in his last illness

I, John Telfer Calvert, Lt-Col, I M S, Civil Surgeon, Darjeeling, do hereby solemnly declare, that I have known Kumar Ramendra Narayan Roy for 14 days and have been his consulting Medical Attendant for 14 days, that I attended him in his last illness, that he died aged about twenty-seven years at Darjeeling at 11-45 o'clock P M on the 8th day of May, 1909, after an illness of 3 days, that the cause of his death was collapse following upon an acute attack of biliary colic (gall stone)

The above was inferred from symptoms and appearances during life, that the symptoms of the disease which caused death were first observed by me on May 6th, 1909, and that the attack became acute on the morning of the 8th and he died the same evening

Signature—J T CALVERT

Designation—Lt-Col, I M S, Civil Surgeon

Place—Darjeeling

Declared before me this seventh day of July, 1909 Signature—W M Crawford, Justice of the Peace and District Magistrate, Darjeeling

N B—This Certificate must be countersigned by a Justice of the Peace, Magistrate, Collector or Judge of the place or district where the death took place, and must bear the Court's Seal when signed before any of the three last officials "

CALVERT'S LETTER TO LINDSAY

There is another letter of Dr Calvert which throws some light on this problem. After the appearance of the plaintiff in 1921, J H Lindsay

wrote a letter to Dr Calvert, the contents of which are not known In reply to that letter Dr Calvert wrote as follows —

"Confidential

Dear Sir,

I remember the second Kumar of Bhowal who came on a visit to Darjeeling in May, 1909 He was suffering from "Gallstone" His death made a considerable impression upon me at the time, as I thought that had he only listened to our advice, he need not have died On the day of his death he was seized with a severe attack of biliary colic An injection of morphia would have relieved him almost immediately of his pain He refused to have any subcutaneous injections, because his mother when *in extremis* had died after receiving a hypodermic injection, and he attributed her death to the injection, instead of to the illness which necessitated the treatment Owing to vomiting and purging, opium by mouth and rectum was not retained The severe pain being unrelied, brought on collapse from which he died I cannot now be certain whether I was present at the moment of his death, but I saw him shortly before it in a state of profound collapse On my last visit his Bengalee medical practitioner was present and arrangements made for the late Colonel Macrae, I M S, then I G C H, Bengal, to see him in consultation in the morning Col Macrae had been Civil Surgeon at Dacca and knew the Kumar's family The Kumar, however, did not recover from the collapse and died the same night

Yours sincerely,

J T CALVERT "

In addition to the above evidence we have the depositions of a number of witnesses examined by the defence and also the depositions of a number of medical men examined as expert witnesses

DISCREPANCIES IN DEFENDANTS' ORAL EVIDENCE

The oral evidence of the witnesses establishes that Ramendra Narayan Roy had numerous liquid motions on the 8th of May and that there was fresh red blood in those motions With the exception of Dr Ashutosh Das Gupta nobody deposed that there was profuse bleeding Even Dr Das Gupta sought to modify a previous statement to the effect that there was profuse bleeding, but later the same witness added that if he were now faced with a similar situation, he would have taken steps to stop the bleeding

Another defence witness Birendra Chandra Banerjee had deposed in the Sripur case that "in the first stools, blood of the quantity of half a commode pot came out", but in this court he explained that the deposition in the former case did not convey his meaning correctly

The remaining witnesses, including Dr Calvert, admit the presence of red blood in the stools, but not in very great quantities Dr Calvert stated that the amount of blood was negligible and that there was in his opinion no occasion to take any steps to stop the bleeding, beyond treating the disease which had occasioned the haemorrhage

It is apparent from a perusal of the evidence of Dr Ashutosh Das Gupta that this witness is wholly unreliable. No matter what definite statement he made, he was compelled under stress of cross-examination to change it, and it seems to me that the learned counsel for the plaintiff was able to make the witness say anything that the learned counsel wanted. I am not satisfied that the final statements of Dr Ashutosh Das Gupta are any more reliable than his earlier statements, but I shall examine those statements to see to what extent they tend to confirm the plaintiff's story.

Another main discrepancy in the evidence regarding the symptoms is as to the time when Ramendra Narayan commenced to pass the liquid stools with blood. Almost all the witnesses assert that this occurred about midday. Dr Ashutosh Das Gupta in his previous deposition had said that these stools were passed about 8 A.M. He tried to resile from that statement, but ultimately reaffirmed it.

The learned counsel for the plaintiff has argued that Dr Calvert's evidence also shows that the bloody motions must have occurred early in the morning. In his cross-examination Dr Calvert deposed

"The late Kumar never passed watery stools with blood, and had he done so, the treatment would have been adapted, if possible, to the cause of that condition. The Kumar passed motions consisting of blood-stained mucus with a little free blood.

Q—When?

A—On the day he died. In the morning or in the middle of the day.

Q—Did he pass many such stools?

A—I was told about a dozen. They were kept most of them for my observation and I saw them. The blood was fresh and red in colour. I can't say when I first saw that. *On the morning visit I think "*

But in re-examination he deposed that so far as he could remember, "the severe symptoms must have occurred about midday, for I examined the stools by day light that I remember, and the patient instead of improving after that got worse."

It is clear that Dr Calvert had no clear recollection of the time except that it was during the day time. Dr Ashutosh Das Gupta deposed in the Defamation case that Ramendra Narayan suffered from diarrhoea for two days before the death. This is not the plaintiff's case, and it is contradicted by other defence witnesses such as Bibhabati Devi and Shyamadas Banerjee who both say that Ramendra was constipated until 8th of May. It may safely be assumed that Dr Das Gupta's evidence on this point is wrong.

TRUE METHOD OF TESTING SUCH EVIDENCE

The contradictory evidence regarding Ramendra Narayan Roy's condition at any particular time is a good illustration of the difficulty in dealing with this case. None of the witnesses deposed until at least 12 years after the events they were describing, and some did not depose until 25 years after those events. Before 1921 none of the witnesses had any occasion, so far as we can tell, to think about the details of Ramendra Narayan's illness; none of them kept any note regarding the patient's condition at any particular time. In these circumstances it seems to me natural for the witnesses to

make mistakes and for them to contradict each other flatly I am of opinion that the most glaring contradictions are natural in such circumstances and that such contradictions do not justify an inference that any of the witnesses were giving deliberately false evidence The only way of testing such evidence is to consider the different versions given and decide whether any version tends to confirm the plaintiff's story, and also to decide which version fits in with the other facts to make a reasonably consistent story

CALVERT'S LETTER AND CERTIFICATE ON DIFFERENT FOOTING

This comment, however, cannot apply to Dr Calvert's letter of May the 10th, nor to his certificate of July the 7th, 1909 If these two documents are substantially accurate, they are sufficient to destroy the plaintiff's case For this reason a very determined attack has been made on Dr Calvert's credit It has been argued on behalf of the plaintiff that a persistent attempt was made by the defendants at one stage of the case to prove that Ramendra Narayan Roy's illness lasted for 14 days, and that Dr Calvert treated him throughout that period As it is now admitted on all sides that the fatal illness lasted for three days only, it is argued that all the witnesses who deposed to the 14 days' illness gave deliberately false evidence The learned counsel for the plaintiff contended that Dr Calvert in his evidence attempted to support the story of 14 days' illness and that in his death certificate, *Ex Z(III)*, the doctor had laid the foundation for this false case The learned trial judge accepted this argument, and even went so far as to state that the death certificate suggested a fourteen days' illness In my opinion there is no foundation for this argument at all

ATTACK ON CALVERT'S CREDIT

In the death certificate Dr Calvert clearly stated that Ramendra Narayan Roy died "after an illness of 3 days" and that the symptoms of the disease which caused death were first observed by him on May 6th, 1909

In this certificate, however, occurs a statement to the effect that the Doctor had known Ramendra Narayan Roy for 14 days and had been his consulting medical attendant for 14 days It was on this sentence apparently that the learned trial judge relied The defendants explained this statement by saying that when Ramendra Narayan Roy first arrived at Darjeeling, Dr Calvert was called in as a consulting physician Some of the witnesses even go so far as to say that Dr Calvert prescribed for Ramendra Narayan at that stage, but no prescription is forthcoming and the evidence is not very convincing The learned trial judge has placed great reliance on the fact that no prescription earlier than of the 6th of May is forthcoming In my opinion the absence of any earlier prescription proves nothing, and the admitted facts and circumstances are such as to suggest that the defence story in this respect is probably true

"FOURTEEN DAYS' ILLNESS"

It is admitted that Ramendra Narayan Roy was suffering from syphilis when he started for Darjeeling It is admitted in the plaint that Ramendra went to Darjeeling for a change of air From the description of Ramendra's character and personality as given by the plaintiff's witnesses, it is difficult to believe that such a man would go to Darjeeling for reasons other than

those of health In Jaidebpur, the Kumars of Bhowal retained the Civil Surgeon of Dacca as a consulting physician, even though they kept private doctors at the family mansion When Ramendra Narayan Roy went to Darjeeling, he took a large retinue, and his followers appear to have behaved as though Ramendra was an independent Prince In such circumstances, I see nothing strange in the story that Dr Calvert was called in as a consultant within a day or two of their arrival, and nothing strange in the absence of any prescription

On the other hand, I cannot understand why Dr Calvert should make such a statement in his certificate if it were not true At the time when the certificate was granted, there was no thought that Ramendra Narayan Roy might still be alive and no possible object could be served by inserting a perfectly gratuitous falsehood into the certificate

The plaintiff's counsel has sought to prove from Dr Calvert's own evidence that the Doctor was trying to make out a false case of 14 days' illness In the course of the cross-examination of Dr Calvert the following question was put, *viz*,

"Q—Were you told in that statement that you assisted by Nibaran Chandra Sen and the family physician treated the Kumar during his last illness for 14 days? (Mr Pringle objects) "

to which Dr Calvert answered—

"A—I don't remember I knew the fact without any statement "

And later occurred the following questions and answers

"Q—Did you prescribe any medicine for the pain in the right side of the abdomen when you saw the Kumar first?

A—I wish to protest against questions on immaterial matters, which, in my opinion, after I have stated clearly the facts I know I remember, may lead me, or confuse me, to think that I remember these small details after so long a lapse of time

(In answer to the question which was repeated, Col Calvert says)—I do not remember but most certainly I must have done so

Q—In what form?

A—I treated the condition from day to day, and I can't remember now what I gave him "

Reliance has been placed on these answers to shew that Dr Calvert was supporting the story of 14 days' illness In my opinion the evidence taken as a whole does not warrant any such inference Dr Calvert insists again and again that he has no recollection of the day to day progress of the case Thus at one stage of his cross-examination he observed

"I can't remember which was the first day I was a consultant called in as required "

And again,

"I have told you I can't remember which was the first day or what medicine I gave him on that occasion "

And again,

"The cause I saw was the stone in the cystic duct I can't remember whether I diagnosed it on my first visit as I can't remember when I first saw him "

I regard the first answer, on which the learned trial judge relied, as a hasty answer given by the witness to the first half of the question without considering carefully what the full question meant, and the statement that he treated the condition from day to day was a general answer not intended to convey any idea as to the number of days on which Dr Calvert treated the patient. I can find nothing in the evidence of Dr Calvert to suggest that he was trying to make out a case of 14 days' illness. But even if it be conceded for the sake of argument that Dr Calvert's evidence given on commission is unreliable, that seems to me no reason to ignore his letter of May the 10th. Dr Calvert's recollection in 1931 might be faulty, but he could not have forgotten the principal events in the illness by the 10th of May, 1909.

NO EXPLAINING AWAY OF CONDOLENCE LETTER

Our attention has been drawn to the language of this letter of condolence, and it has been argued that the language is not the language of an Englishman, and further that the letter must have been procured from Dr Calvert by Satyendranath Banerjee as a shield against awkward enquiries.

The letter is in Dr Calvert's own handwriting. Dr Calvert admits that he did not write the letter of his own initiative, but adds that he cannot remember who asked him to write it. From these facts we have been invited to draw the inference that it was Satyendranath Banerjee who persuaded Dr Calvert to write the letter. It may be noted that the learned trial judge has drawn this inference.

In my opinion no such inference can be justified from the facts proved in the case. Satyendranath Banerjee and Dr Ashutosh Das Gupta both deny having approached Dr Calvert for the letter and both deny knowledge as to how the letter was obtained. Even if it be assumed that these two witnesses are untruthful, that fact alone is not sufficient proof of the existence of facts denied by them. In my opinion there is material on the record indicating that Mukunda Guin was probably the man who induced Dr Calvert to write the letter. In the first place, Satyendranath Banerjee was no longer dependent on the good graces of the elder brother Ramendra Kumar Roy and had consequently little reason to seek to satisfy the latter that he had been assiduous in his care of Ramendra. Mukunda Guin on the other hand had recently been appointed Secretary to Ramendra and might easily be anxious lest the brothers of Ramendra should think that he had been negligent. In the second place, the letter itself refers again and again in flattering terms to the conduct of Mukunda Guin, thus suggesting in my opinion the probability that it was the latter who had approached Dr Calvert. Lastly, we have the entry in Dr B. B. Sarkar's diary that it was Mukunda Guin who went round paying the doctors. All this evidence suggests that it was probably Mukunda Guin who obtained the letter from Dr Calvert. There is no evidence whatever to shew that Satyendranath Banerjee or Dr Ashutosh Das Gupta obtained the letter, and both these witnesses deny having done so. Mukunda Guin was unfortunately murdered in 1921, and his evidence on the point is, therefore, not available.

In the circumstances I consider any inference that the letter was obtained by Satyendranath Banerjee or Dr Ashutosh Das Gupta to be wholly unjustified.

We were asked to consider the evidence regarding the circumstances under which this letter was produced by Satyendranath Banerjee in 1921 and

to draw the inference that the letter must have been all along in his possession. The evidence is far from clear and does not, in my opinion, justify any such inference.

As to the argument regarding the phraseology of the letter being un-English, I cannot understand what inference we are asked to draw. If it were argued that the letter was not written by Dr Calvert or that his signature had been obtained by fraud to a letter, of the contents of which he was ignorant, I could understand the argument. But in this case the letter is in the handwriting of Dr Calvert himself and was written when the facts to which it refers, must have been fresh in his memory. It follows that Dr Calvert must have been well aware both of what he was doing, and whether the statements contained in the letter were true or false. The conclusion I draw is that the statements contained in that letter must be either substantially true or intentionally false.

THE ARSENIC PRESCRIPTION

Before dealing with the expert medical evidence regarding the symptoms shewn by Ramendra Narayan Roy during his illness in Darjeeling and the prescriptions and general treatment, I propose to examine the much debated prescription *Ex 51 (a)* made by Dr Ashutosh Das Gupta on the 7th of May. This prescription bears the initials of Dr Das Gupta and is disowned by Dr Calvert. The evidence of the other doctors in the case shows that the medicine was so unsuitable in the circumstances that it seems scarcely credible that doctors of the standing of Dr Calvert and Dr Nibaran Sen could have prescribed it. Dr Ashutosh Das Gupta at first denied that he had made the prescription and tried to say that he must have written it at the dictation of some one else, but he was ultimately driven to say that he must have made the prescription and administered the medicine.

Two questions arise in considering this prescription, *viz*

- 1 Could it have been used with the intention of committing murder?
- 2 Was it intended not to administer the medicine but to use the prescription as a cloak to cover the administration of arsenic in some more deadly form?

THEORY OF INTENTION TO CAUSE DEATH

It is well known to laymen as well as to medical men that the symptoms of chronic arsenic poisoning resemble closely the symptoms of other diseases, such as, for example, enteritis. A would-be poisoner might, therefore, obtain a prescription containing arsenic with the object of causing the death of his victim by giving repeated small doses of the poison. We are not, however, concerned with a case of chronic arsenic poisoning, but with one of alleged acute arsenic poisoning caused by one single administration of the poison.

The prescription *Ex 51 (a)* contains two poisons, *viz*, arsenic and strychnine. It was to be made up into 25 pills each of which was to contain 1/100 gr of arsenic and 1/3 gr of *Nux Vomica*.

According to medical authorities the minimum dose of arsenious oxide which is ordinarily fatal to human beings is less than 2 grains. Some people are especially sensitive to arsenic poisoning, and much smaller doses have

caused death. The learned trial judge relying on a misquotation in Dr Bradley's evidence states that death has been known to occur from the administration of two drops of Fowler's Solution, which is the equivalent of 1/48th grain of arsenious oxide. Dr Bradley misread the authority in question. The case is one described by Sajou in his Encyclopaedia of Medicine, but the facts are misstated. Sajou states that after the administration of 2 drops of Fowler's solution, symptoms of arsenic poisoning occurred but passed away unrecognised at the time. A further dose of 3 drops was then given to the patient. The symptoms of arsenic poisoning were then so marked that proper treatment was given and the patient recovered. This seems to indicate that 1/20th grain was not fatal in this case of extreme susceptibility.

It is obvious, therefore, that 1/100th grain of arsenic could not be expected to produce any symptoms of arsenic poisoning, and even the whole 25 pills if reduced to powder and given at once would not cause death by arsenic poisoning to anybody unless that person was unusually susceptible. I find it difficult to believe that any murderer would set out to poison his victim by giving him only 1/8th part of the dose which might ordinarily be expected to cause death. One would expect a murderer in such a case to err on the other side and to give his victim an excessive dose. This argument would apply with added force to the case of a poisoner who had the expert knowledge of a doctor.

Another reason for holding that this medicine could never have been administered with the object of causing the death of the Kumar, is to be found in the amount of Nux Vomica in the prescription. Nux Vomica contains strychnine. Strychnine poisoning is accompanied by dramatic symptoms which cannot be ignored. Moreover, the symptoms occur within a very short time of the administration of the poison. No body could hope to administer strychnine to a victim in the presence of others, and in sufficient quantity to cause that victim's death, and yet escape detection. In the present case it is conceded that Bibhabati Devi could not possibly have been a party to any conspiracy to murder her husband, but she must have known of the administration of any drug to him. It follows, that no conspirator could have intended to cause the death of Ramendra Narayan Roy by strychnine poisoning. Yet a quantity of the pills prescribed in *Ex 51 (a)*, sufficient to cause symptoms of arsenic poisoning in an ordinary human being, would be more likely to cause his death by strychnine poisoning.

The prescription was made up into silver coated pills. It is impossible to believe that any conspirator would attempt to administer 25 pills to his victim at one time. On the other hand, the mixture is so nauseating that if the pills were pounded and administered in the form of a powder, it is almost certain that the powder would be vomited forth immediately.

For these reasons, I am convinced that this medicine could never have been administered to Ramendra Narayan Roy with the intention that it should cause his death.

POSSIBLE USE AS A CLOAK

I find it almost equally difficult to believe that this medicine was obtained as a cloak for the administration of arsenic in some more deadly form. The difference between cases of poisoning by a single large dose and of poisoning by repeated small doses must be kept in mind. A poisoner setting out to cause the death of his victim by administering a single large dose

of arsenic, must expect either to cause the death of his victim almost immediately, or to fail in his attempt. When arsenic is administered in this way, the victim is almost certain to realise that he has been poisoned and to express his opinion to persons with whom he is in contact. If, therefore, the victim comes into contact with persons who are not members of the conspiracy to poison him, he is almost certain to tell them of his suspicions. If a doctor is called and sees the victim and hears of these suspicions, the probability is that the doctor will insist on a chemical examination of the faeces and vomited matter, to determine whether arsenic has been administered or not. Such an examination might be expected to reveal arsenic in quantities for which the prescription *Ex 51 (a)* would not account. In other words, if suspicion was aroused at the time, such a prescription would be useless as a cloak.

If, on the other hand, no innocent outsider came in contact with the victim and heard his suspicions, death might be expected to occur quickly. Among Brahmins and other caste Hindus in this country, it is the custom to cremate the dead body within a very short time of death. There is no custom of keeping the body in the house for several days, nor is there any custom of burying the dead, nor is any medical certificate required before a body can be burned at the cremation ground. Therefore, if a caste Hindu is poisoned and no suspicion is aroused at the time, it is almost certain that the body will be cremated and all evidence of poisoning destroyed. In a case of this kind there is no necessity to have such a prescription as *Ex 51 (a)* as a cloak. It seems to me, therefore, that in a case of acute arsenic poisoning such a cloak as a prescription like *Ex 51 (a)* containing a minute quantity of arsenic, is either so obviously unnecessary or so obviously useless that no murderer is likely to think of employing it.

I do not believe, therefore, that these pills were administered with the deliberate intention of poisoning Ramendra Narayan Roy, nor do I believe that they were procured as a cloak to cover the administration of arsenic in some other form.

The plaintiff's argument in favour of arsenic poisoning is based almost wholly on the evidence of the expert witnesses, more particularly on the evidence of Dr MacGilchrist and Dr Bradley.

BILIARY COLIC—CAUSE AND TREATMENT

All the doctors examined in the case agree as to the cause of biliary colic, though there is a difference of opinion as to the appropriate treatment.

Stones form in the gall bladder, which vary considerably in size. If they are very small, they pass out with the bile and cause no great discomfort. If, however, they are too big, they may stick in the cystic duct or in the common duct. They are then either forced out through a duct which is too small to allow them free passage, or they recede into the gall bladder temporarily. When the stones are being forced through the ducts, they cause the patient excruciating agony, which is known as biliary colic. In some cases the stones may not be able to pass through the ducts at all, and they may cause ulceration in the ducts and surrounding tissues and escape through the ulcerations so caused.

To quote Dr MacGilchrist, "Biliary Colic comes in paroxysms at intervals of 1 or 2 minutes or the second paroxysm may not come for days, or a single

paroxysm may expel the stone and the thing is finishing requiring no further treatment except as a precaution "

MEDICAL EVIDENCE

Treatment of biliary colic may be divided into 3 stages, *viz*

- (i) treatment to prevent the formation of stones, or to dissolve them in the gall bladder,
- (ii) treatment during the interval, other than treatment for the purpose described in (i), and
- (iii) treatment during the paroxysm

Judging by the evidence recorded in this case, medical opinion is divided as to the treatment

For the interval between paroxysms Dr MacGilchrist would prescribe—

"Full diet, specially meat diet, which increases bile acids which have the power of dissolving gall stones to some extent

And next, warm weak solution of alkalis such as sodium bicarbonate or Vichy waters or Carlsbad waters

And thirdly, exercise, abdominal massage These have the same effect—increases circulation of the juices and secretions of the abdominal contents

And one must wear abdominal belts or tight clothes round the abdomen, and there are certain drugs that increase the secretion and flow of bile, such as sodium salicylate, and because of marked constipation that accompanies biliary colic, laxatives

These are the chief measures to prevent the formation of gall-stone and the best drug is olive oil—large doses, 2 to 4 ounces early morning in empty stomach daily I would give it, as oils are absorbed from the bowels as fatty acids and glycerine All fats break up into these two before they are absorbed and these have power of dissolving the chief constituents of gall-stones There is no drug which has a direct action or can reach a gall-stone in situ, but there is a probability of fatty acids doing so "

And for the paroxysms, he would advise hot applications, fomentations, hot baths, if the patient is equal to them, and hypodermic injection of morphia

Dr Bradley on the other hand deposes as follows

"Q—What would be your prescription in a case of impacted gallstone during attack?

A—The only thing you can do is to relieve the suffering of the patient

Q—What would you prescribe during intervals?

A—There is not much treatment again I would restrict or prohibit eggs in the diet, would give warm saline drinks, prescribe exercise and massage and advise the patient to go and see a surgeon In other words, the treatment is entirely surgical, not medical "

Dr Calvert clearly belongs to the school which believes that during paroxysms the only thing to do is to relieve the pain and that this end is most readily achieved by injecting morphia. He does not believe in any treatment to prevent the formation of stones or to dissolve them in situ. He states that in between the paroxysms, the patient is left with an irritable stomach and intestines during which gastric sedatives are recommended by the authorities. Dr Calvert asserts that he was called in on the morning of May the 6th and that he treated the patient for dyspepsia, probably due to gall-stone. Both Dr MacGilchrist and Dr Bradley agree that the prescription Ex 51 is suitable for dyspepsia with flatulence. Dr MacGilchrist, it is true, says that he would not prescribe it for a man suffering from biliary colic, but the context shews that he was then referring to the paroxysm and not to the interval. He nowhere says that this would not be a suitable prescription for the interval, if the patient suffered from dyspepsia.

Dr Bradley deposes that he would not prescribe Ex 51 and 51 (c) for the intervals in biliary colic unless by coincidence the patient had indigestion, and in cross-examination he accepted the following statement in Price as authoritative, viz, "In biliary colic most frequently the development of gall-stone is preceded and accompanied by continuous or intermittent dyspepsia."

It is true that he also states that he would not prescribe Ex 51 and 51 (e) for intervals in biliary colic, because they will treat the effect and not the cause.

EFFECT OF EXPERT EVIDENCE

The total effect of this expert evidence seems to me to be this. In the intervals of biliary colic, the patient will probably suffer from dyspepsia. Prescriptions Ex 51 and 51 (e) are suitable for dyspepsia but would not reach the cause of the trouble, viz, the gall-stone. Though Dr Bradley would not have given these prescriptions, it is by no means clear that Dr MacGilchrist would disapprove of them. Dr Calvert's statement that he prescribed these medicines for dyspepsia caused by gallstones is, therefore, not an incredible or unreasonable statement. Dr Calvert's disbelief in the efficacy of any treatment in the interval for the purpose of removing the stone, is shared by Dr Bradley, and therefore, the absence of any prescription indicating such treatment is no indication that the patient did not suffer from biliary colic.

It is agreed on all sides that for the paroxysm the only treatment is to relieve the pain, preferably by injecting morphia. Dr Calvert asserts that from the beginning he advised morphia injections but the patient obstinately refused to have them, because his mother had died after receiving a hypodermic injection and he attributed her death to the injection.

Now it is not denied that Ramendra Narayan's mother Bilasmani Devi had died after receiving such an injection. All the members of the Darjeeling party who have deposed in this case have sworn that hypodermic injections were recommended by Dr Calvert and refused by Ramendra Narayan Roy.

Moreover, both in his letter dated May the 10th, 1909, and in his letter dated August 3rd, 1921, Dr Calvert clearly stated that Ramendra Narayan Roy refused to have an injection until too late. I am unable to imagine any circumstances which could have induced Dr Calvert falsely to assert in the letter Ex 2(205) the story of refusal of hypodermic injections, nor

can I understand why he should have mentioned this detail in his letter of 1921, if it was not true. The letter of 1921, *Ex Z(127)*, does not read like the letter of a man who has been instructed what to write, and even Mr Chatterjee for the plaintiff in dealing with this letter described it as the result of real memory.

REFUSAL OF HYPODERMIC INJECTION

We are asked to reject the evidence regarding the refusal of hypodermic injection by the patient, because the witnesses give very conflicting evidence as to the time when it was recommended, and also very conflicting evidence as to the time when consent was ultimately obtained and the injection given. I regard this conflict of evidence as natural. Further, our attention was drawn to the phrase, "The morning I was called in he felt so much better that he declined the treatment I proposed" in *Ex Z(205)*, and Mr Chatterjee asked us to hold that Dr Calvert meant to say that he advised hypodermic injection during the interval between paroxysms. Dr Calvert was not asked to explain the meaning of this phrase. It does not seem to me necessarily to mean that he recommended an injection during an interval, nor can I believe that Dr Calvert would deliberately write what he considered nonsense in such a letter, whatever the inducement to write the letter might have been. It must be remembered that when writing that letter Dr Calvert was not attempting to describe accurately and in detail the course of the illness; he was writing a difficult letter to a person whom he had never seen. I am of opinion that the very fact that this story of the mother dying after an injection remained in Dr Calvert's memory, is a strong indication that an injection was recommended and refused until too late.

It should be noticed that in the first prescription *Ex 51*, there is included *Lint opii*, and in *Ex 51 (c)*, a later prescription of Dr Calvert's, there are opium and belladonna pills.

Dr Calvert's description is to the effect that when injections were refused, he tried *Lint opii* and subsequently the opium and belladonna pills as substitutes. We have been asked to hold that they could never have been prescribed as substitutes. As to the efficacy of these alleged substitutes, Dr Bradley deposing in 1935, said

"*Lint opii* on *Ex 51* is a liniment. I would not prescribe it—but 20 or 25 years ago when I first began to practise, it was used for massaging, for rubbing into sore, painful areas and so forth, but experience has shewn it is of no use. It is not absorbed",

and (*Ex 51 (c)* shewn)—

"Q—Suppose the patient had refused hypodermic injection and he had pain, would it have been reasonable to prescribe this opium and belladonna as sedative?

A—If he had refused hypodermic injection, then opium and belladonna pills would be a good sedative to give—logically it would be."

Dr Calvert was under no illusions as to the comparative superiority of injections, but in this case he said that it was not a case of what treatment was necessary for the patient, but what treatment he would accept and agree to at the hands of his medical attendants.

I can find no adequate reason for rejecting Dr Calvert's evidence regarding the refusal of hypodermic injections by Ramendra Narayan Roy until too late, and regarding the prescription of substitutes for injection

I hold, therefore, that there is clear and reliable evidence on record that the treatment for paroxysms in biliary colic was prescribed in this case

But the prescription of Dr Ashutosh Das Gupta on May 7th, viz *Ex 51 (a)*, was not appropriate in a case of biliary colic. All the doctors agree on this point. If this prescription had been made by Dr Calvert, it would be difficult to believe that he had already diagnosed biliary colic. But it was not prescribed by Dr Calvert. It is true that Dr Ashutosh Das Gupta tried to suggest at one time that Dr Calvert must have prescribed this medicine, but he gave up the suggestion.

Dr Ashutosh Das Gupta was not a fully qualified Bachelor of Medicine. He had no qualifications which would be recognised outside India. He had passed out of the Dacca Medical School, but was, at the time, young and inexperienced. It is agreed by all the experts that on account of the marked constipation that usually accompanies biliary colic, laxatives are indicated for the intervals, and the evidence of the defence witnesses other than Dr Ashutosh Das Gupta, is to the effect that Ramendra Narayan Roy suffered from marked constipation at this time.

It would have been natural for Dr Ashutosh Das Gupta to prescribe a laxative. Instead he prescribed a drastic purgative. This purgative would have been harmless at ordinary times. Though it was in fact not suited to the occasion, I do not think that the administration of this medicine shews any criminal intention. It is a medicine which an inexperienced and rather incompetent medical student might have thought to be suitable.

"WATERY MOTIONS WITH BLOOD"—POSSIBLE EXPLANATION

Dr MacGilchrist and Bradley have deposed that frequent watery motions with blood do not occur in cases of biliary colic, and Dr Calvert agrees that they occur very rarely. From this it is argued that Ramendra Narayan Roy could not have been suffering from biliary colic. But this conclusion does not logically follow. It may be that in cases of biliary colic where there has been no interference by an incompetent physician, watery stools with blood will not occur. But the problem we have to solve is whether such symptoms would occur in a case of biliary colic if the patient had been given the medicine of prescription *Ex 51 (a)*. This question was not put directly to any doctor. The nearest approach to a direct question on this point was made to Dr Bradley. In his deposition occur the following passages:

"Q—You have seen the prescriptions for indigestion and flatulence, and then you come across these two other prescriptions of his, one indicating severe diarrhoea and the other indicating collapse, and you also have seen the prescription for relieving cramps and also the liniment for application on the stomach, and you also have the information that Col Calvert found free fresh blood in the stools of the patient on the day of his collapse, putting all this together, how do you diagnose the case?"

A—My first impression would be cholera, but when I heard of the fresh blood I would rule that out and go back to the previous

question to which I said that something (must) have produced an intense congestion of the lower bowels

Q—Suppose when this occurs to you, you are told that behind Col Calvert's back the prescription *Ex 51 (a)* was made, would that help you to come to a diagnosis?

A—I would have settled it in my mind I would think that the patient had had an overdose of this (points to *Ex 51 (a)*)

Q—What would you call an overdose?

A—That would mean a long answer, because you must take the prescription as a whole and not any one of the ingredients You have half a grain of aloin, a grain of euonymin, one-third grain of nux vomica, these three things alone in the doses here, are capable of producing purging, specially in a patient with gastric irritation or indigestion Normally, I would not expect anything serious from the amount of arsenic here—1/100th of a grain Judging by what we know of the patient it might prove serious in combination with the other ingredients, but I would come to the conclusion that an overdose had been given by mistake, but I should say that this prescription as it stands, one pill three times a day, might itself prove serious under the circumstances as I visualise them, but I should imagine an overdose, when there were so many doctors and nurses, but I put in nurses as I read in Col Calvert's evidence that there was a nurse on that day and she does not appear again—I should imagine some interference with each other I should suspect an overdose—the case being muddled up in some way How can it be otherwise when on three days you have an amazing collection of prescriptions? It is constantly (? certainly) not the etiquette of our profession to administer a medicine to a patient behind the back of the consulting physician * * * **

and—

“Q—Are you suggesting that Col Calvert did not treat the case properly?

A—I did suggest that in view of his statement that there was bright red blood in stools and the collapse and death of the patient I think that I should add in defence of Col Calvert that he failed to realise that there was any influence or factor in the case until it was too late He was too great a physician to make a careless mistake He was proceeding on the assumption that it was biliary colic until it was too late I don't want to criticise a man like Col Calvert Either he made a mistake or his memory was at fault ”

This evidence does suggest that the symptoms which appeared on May the 8th might be expected to occur in a case of biliary colic, if, during an interval, the pills prescribed in *Ex 51 (a)* had been administered

The doctors have one and all stated that if there is bleeding in the upper intestine, this will pass out of the rectum as a tarry black substance—for,

as Dr Bradley says, "the intestinal tract is 36 feet long and some digestive processes must have taken place on the blood passing through that, however rapidly it might pass, and therefore it would get black "

In dealing with this point, too, it is not clear that doctors have taken into account the drastic purgative *Ex 51 (a)*

Be that as it may, Dr Bradley's evidence seems to me to shew that the symptoms of May the 8th could occur in a case of biliary colic, if the patient had taken the drastic purgative prescribed by Dr Ashutosh Das Gupta. There is no evidence regarding the number of these pills taken by the patient. But we do know that he was a self-willed obstinate young man, and he may easily have taken more than the prescribed number.

The later prescriptions of May 8th are admittedly not prescriptions which may be expected in cases of biliary colic, nor are they the recognised treatment for acute arsenic poisoning. They shew merely that steps were taken to deal with the symptoms already mentioned.

SYMPTOMS OF ARSENIC POISONING

Mr Chatterjee for the plaintiff laid considerable stress on the evidence that the symptoms of May 8th are those that occur in cases of acute arsenic poisoning. The authorities all agree that in cases of acute arsenic poisoning the symptoms may resemble those of cholera, but that in the former red blood may appear in the stools, whereas in the latter it will be absent. In both cases, cramps and exhaustion may be expected to occur.

But none of the doctors were asked whether these symptoms would be likely to occur at the times described by the plaintiff.

In Lyon's Medical Jurisprudence the symptoms of acute arsenic poisoning are described thus

"Gastro-enteric type—

In this country, where practically all cases of arsenical poisoning are due to one or other of the three slightly, if at all soluble, natural compounds, *viz*, the oxide or the sulphides, symptoms do not appear till from half to one hour after the ingestion of the poison. The oxide is usually more rapid in action than the sulphides. The interval before the appearance of the symptoms may be very short if a large dose of the poison has been taken, or if the arsenical compound has been treated with a substance that increases its solubility, as is not infrequently done. This practice will be referred to later.

The earliest effects following on the taking of the poison are a feeling of faintness, accompanied by nausea and heart-burn. Shortly after this the individual begins to vomit, ejecting such food as his stomach may contain. The heart-burn rapidly develops into a burning pain in the stomach, which extends upwards to the throat. The pain increases in intensity, and spreads over the abdomen and thorax, the slightest pressure on the abdomen is resented. It is at this stage that the medical man generally first sees the patient. He will probably find the unfortunate tossing about on his charpoy or on the floor, vainly trying to find some position which will bring him relief from the agonizing pain, while at increasingly frequent intervals he reaches over the side of the bed to vomit, with explosive violence, quantities of slimy fluid, which may already be showing spots or streaks of blood.

The throat feels raw and parched, the thirst is unquenchable. The patient begs continually for water which he swallows greedily only to eject it almost instantaneously. The tongue is coated with a thick white fur. The vomit begins to be more mucoid in character, and is coloured yellow or green by regurgitated bile, and is probably now more heavily flecked or streaked with blood. The abdomen is distended, and the torment is increased by the superaddition of colic. Purging soon follows, at first of the ordinary bowel contents, later of foetid, fæculent, and perhaps blood-stained matters. An ominous sign is the appearance of thin, watery, turbid motions, resembling the well-known "rice-water" stools of cholera. Tenesmus and pain of a burning character are constantly present in arsenical poisoning. The patient at first has control over his sphincters, he will during the earlier stages retire to the closet, or will ask for the bed-pan, later with increasing exhaustion will come loss of control and involuntary evacuations. The urine may be suppressed, or if any is passed, it is high coloured and albuminous, and possibly contains blood. Micturition is difficult and painful. Soon after the onset of purging the nervous symptoms become manifest. Cramps occur particularly of the muscles of the calves. Exhaustion from pain and the rapid draining away of the body fluids brings with it the usual signs of collapse, a feeble pulse, embarrassed respiration, and a subnormal temperature, accompanied by cold clammy sweat. The face is pinched, the eyes sunken, the breath cold, the cyanosis of the lips tells a deficient aeration of the blood, which, thickened by the rapid draining away of the body fluids, can no longer be maintained in efficient circulation by the failing heart. The patient gradually but steadily sinks, fluid evacuations dribble away from the now inert body, feeble attempts to vomit give place to a persistent hiccough. The mind, at first unaffected, shares in the general exhaustion, a low delirium may supervene. Respiratory and cardiac weakness become progressively more marked, twitching of the muscles, or even general convulsions, may usher in the end, which, however, in most cases takes place quietly from respiratory and cardiac failure, in from eighteen to twenty-four hours.

The condition is as a rule steadily progressive from start to finish, the procession of the symptoms being continuous. Remissions may, however, occur, followed by a return of the acute symptoms.

Prognosis—Such is the sequence of events in a fatal case, but a fatal issue is, of course, not inevitable. The severity of the early symptoms may subside, the vomit becomes less in quantity, the stools less copious, are now tinged with bile, the acute burning pain is dulled, and the urine is voided more freely. The exhausted patient may fall asleep, to awaken, shaken by the storm he has weathered, with a still irritable stomach, which is unable to tolerate any but the blandest of foods, a tender abdomen, a sore throat, and a troublesome thirst. Improvement is generally rapid, though in exceptional cases peripheral neuritis, with perhaps wasting of the muscles, and paralysis may supervene days after the subsidence of the acute condition.

Recovery may even take place after the patient has entered the state of collapse, the pulse becomes stronger, the respiration improves, the body temperature rises to normal or even over, a stage of reaction sets in, but unlike the reactionary stage of cholera, this period is not fraught with danger.

Signs presaging a fatal termination are the continuance of copious watery motions, fall of temperature, increasing cyanosis, and a failing pulse ”

From this description, I should not expect the pain in the chest to occur 3 or 4 hours after the administration of the poison, nor should I expect the vomiting and purging to be delayed for 8 or 10 hours. I can find no authority for the view that liquid motions would cease to occur 8 or 10 hours before death, though the patient continued to pass mucus stained with a little red blood. In other words, though the symptoms found on May 8th may each of them occur in cases of arsenic poisoning, I am not satisfied that they would occur in the order and at the times alleged by the plaintiff.

DR DENHAM WHITE'S OPINION—NOT HELPFUL

Mr Chatterjee laid great stress on the evidence of Dr Denham White who deposed for the defendants.

Dr Denham White deposed that from Dr Calvert's evidence alone, without considering the prescriptions, he formed the opinion that the case was not of enteritis, but when he took the prescriptions into consideration, it was his opinion that the illness was dysentery but that the treatment was not for that. In view of the fact that Dr Calvert insists that he does not remember with any degree of accuracy what was the course of the illness, and that speaking from memory, he gives the ordinary symptoms of biliary colic, with the single addition that the Kumar passed motions consisting of blood-stained mucus with a little free blood, it is difficult to understand on what material Dr Denham White formed these opinions. His opinion and the opinions of the other experts in the case are much less helpful than they might have been owing to the manner in which they were examined. These doctors may reasonably be regarded as experts in medical matters, but they are not necessarily experts in appraising the value of oral evidence. They are competent to give expert opinion on a given set of facts, but they are not necessarily competent to determine from a mass of contradictory evidence what those particular facts are. Therefore, their opinions as to the significance of the prescriptions made and of the symptoms that are known to have occurred are entitled to respect. But any opinion expressed by them, based on a perusal of the oral evidence of a witness and without a clear statement of the facts which they consider to have been established, seems to me of little value. For this reason I find it difficult to attach much importance to the evidence of Dr Denham White to which I have referred above.

After careful consideration of all the medical evidence in the case, I do not think there is any good reason to doubt that Dr Calvert diagnosed biliary colic and treated Ramendra Narayan Roy accordingly, and that the symptoms which occurred on May the 8th were due in part to biliary colic, and possibly in part to the purgative *Ex 51 (a)*.

Mr Chatterjee for the plaintiff drew our attention to the evidence of Satyendranath Banerjee regarding the change of bedroom after dusk on the evening of May the 7th and argued from this that Ramendra Narayan Roy must have been rolling about in agony in his bed on that night. From this, we are asked to hold that the agony and rolling which induced the conspirators to move Ramendra from his bedroom to a bed on the floor of an adjoining

room must have been due to the arsenic poisoning. If that were indeed the case, then the change must either have been made after mid-night if it is to fit in with the plaintiff's version, or have been made in anticipation of the agony to come. With a fine disregard of his client's evidence, Mr Chatterjee also drew our attention to the evidence of Satyendranath Banerjee to the effect that the attendants went to bed that night at about 10 p.m. and slept peacefully till morning. Mr Chatterjee treated us to a vigorous denunciation of the heartlessness of these scoundrels who paid no attention to the screams of agony of Ramendra Narayan Roy and left him unattended till morning. We were then asked to consider the evidence of Dr Ashutosh Das Gupta and hold that a messenger was sent to Dr Calvert at 4 or 5 A.M. to report that the patient was much better and to obtain the prescription *Ex 51 (e)*. I shall refer to these versions when discussing the theory of conspiracy.

INCONSISTENT FINDINGS OF TRIAL JUDGE

The learned trial judge is rather inconsistent in his findings on this subject. At one place in his judgment, he indicates that nobody suggested that if arsenic got into Ramendra Narayan's system on May 7th and led to the symptoms found on May the 8th, that arsenic must have come from the pills of the prescription *Ex 51 (a)*. But later the learned judge observes "But so long the bare possibility that he (i.e., Dr Ashutosh Das Gupta) gave this medicine like a quack and was frightened at the result, remains, I cannot find that he did it wilfully to cause death." The learned trial judge was not satisfied that there was a conspiracy to kill, nor even a deliberate attempt to murder Ramendra Narayan Roy yet at the same time the learned judge held that the telegrams sent during the course of the illness were deliberately false, that the watery stools with blood were deliberately hidden from Mr Calvert and thereby the latter was prevented from applying the proper treatment, and Dr Calvert was subsequently induced to write a letter full of falsehoods and to give a deliberately false certificate of death. I am unable to reconcile these findings. The learned counsel for the plaintiff who based the whole of the rest of his argument on the findings of the judge, challenged this finding and argued that there must have been a conspiracy to kill.

ALLEGED CONSPIRACY TO MURDER

Let us, therefore, consider the possibility of there having been a deliberate conspiracy to murder Ramendra Narayan Roy, by administering arsenic poisoning. In favour of the theory of deliberate arsenic poisoning we have the evidence of the plaintiff as to the administration of the poison. I have shown above that I consider this evidence worthless. We have further the symptoms of the 8th of May which are apparently consistent with a case of arsenic poisoning, though not, I think, inconsistent with the defence version.

We have further the fact that bilary colic was not mentioned in the telegrams, nor in the obituary notice which appeared in the newspaper on May 11th, and if the letter of Satyabhama Debi in 1917 is considered conclusive, it was not believed by the family to be the cause of death.

REFUTATION OF THEORY

Against this we have the considered opinion of Dr Calvert who was an extremely able physician, and who had the advantage of seeing the patient before the serious symptoms developed and who must have heard from the patient himself the symptoms which manifested themselves previously. Dr Calvert's evidence is confirmed by his letters and his certificate, unless these are deliberately false, there was a proposal to inject morphia, which cannot be reconciled with the plaintiff's version. It is also difficult to account for the change of bedroom in a way to fit in with the plaintiff's version. It seems to me that unless Dr Calvert was knowingly writing false letters and giving a false certificate, the theory of conspiracy is untenable, and Dr Calvert had no reason to do so—unless of course he was bribed. But the most convincing refutation of the theory is obtained by merely setting out the conduct of the conspirators step by step on the assumption that there was a conspiracy. Thus, we are requested to believe that Satyendranath Banerjee, Dr. Ashutosh Das Gupta and Mukunda Guin conspired together to murder Ramendra Narayan Roy by administering a single fatal dose of arsenic. They waited before putting their plan into effect, until Ramendra had some illness requiring the attendance of an outside physician of great reputation. They then called in two doctors, viz Dr Calvert and Dr Nibaran Sen Gupta, and demonstrated that there was nothing much the matter with Ramendra Narayan. Thereafter they gave the poison. If we are to accept the plaintiff's times, they persuaded their victim to change his room for no reason apparent at the time, and in anticipation of the agony he was about to suffer. Next morning early, at 4-0 or 5-0 A.M. when the poison began to take effect, one of them ran off to Dr Calvert with the false news that the patient was feeling much better, in order to get a simple medicine for dyspepsia. When all the well known symptoms of arsenic poisoning had appeared, they sent off a false telegram to Jaidebpur to the effect that Ramendra was feeling better and was contemplating returning home. Thereafter they called in Dr Calvert and Dr Nibaran Sen to see the patient while he was still alive, and might possibly have been saved, and shewed these doctors some at least of the blood-stained fæces and at the same time sent another telegram to Jaidebpur revealing the symptoms which might raise suspicion. They were fortunate enough not to arouse the suspicions of Dr Calvert or Dr Nibaran Sen, so as soon as these doctors left the house at dusk, they called in another doctor, Dr B B Sarkar, to see the patient. Even his suspicions were not roused. Then next morning, they brought in a fourth doctor—Dr Pran Krishna Acharyya—with a request that he should see the patient, but when Dr Acharyya arrived, they refused to let him uncover the body. Not content with these persistent attempts to arouse suspicion, they sent one of their number to Dr Calvert while the facts were still fresh in his mind, to ask him to write a letter to Jaidebpur, full of the most obvious falsehoods. Then two months later they wrote to a stranger in Darjeeling asking him to get a false certificate of death from Dr Calvert, mentioning as the cause of death, a disease (biliary colic) which is rare in young men and which very rarely indeed ends fatally—and this in spite of the fact that they had revealed in their telegram to Jaidebpur the symptoms of arsenic poisoning, and in spite of the fact that according to the finding of the trial judge (a finding which is based on no evidence whatever) they had sent information to the newspaper to the effect that the death of Ramendra Narayan Roy had been caused by fever accompanied by loss of blood and pain in the abdomen.

Such conduct is so unnatural and unreasonable that no court could readily believe it occurred.

POSSIBLE MOTIVES

In considering whether there was such a conspiracy, the possible motives of the conspirators deserve examination. The learned counsel appearing for the plaintiff has laid great stress on the evidence that Bibhabati Devi, wife of Ramendra Narayan Roy, came of a family of very limited means, and he argued that Bibhabati Devi's brother Satyendranath Banerjee was so affected by this marriage of his sister to a very wealthy bridegroom, that he virtually abandoned his studies and spent his days in idle luxury as a guest of his brother-in-law. The suggestion was made that Satyendranath Banerjee became so enamoured of a life of ease and luxury that he must have planned to remove his brother-in-law and secure that brother-in-law's estate for himself. Letters from his mother shew that Satyendranath Banerjee spent more time at Jaidebpur than she approved of, and they indicate that the mother dreaded the effect, on a boy who had his own way in the world to make, of the luxury of the Bhowal family. It is easy to exaggerate the importance of these letters, and to my mind they do not prove anything more than the natural anxiety of a mother who had her son's real welfare at heart. It may, however, reasonably be argued that the possibility of acquiring great wealth might have attracted Satyendranath Banerjee and induced him to conspire to murder his brother-in-law. But this motive could hardly have weighed with the other alleged conspirators—Dr Ashutosh Das Gupta and Mukunda Guin. They were servants of the Bhowal Estate, they were more likely to benefit materially if Ramendra Narayan Roy lived to enjoy the estate than if the income of the estate went to an absentee landlord living in Calcutta. No motive for them to join in any conspiracy has been so much as suggested. Presumably the theory is that they were won over to Satyendranath Banerjee's views by some promise of future payment. Satyendranath was then a person of no means, he could not make any immediate cash payment as an inducement. If the conspiracy succeeded, Satyendranath Banerjee could not hope to obtain any money from the estate for some months. Yet we are asked to believe that these people relied on a promise of payment in the future, and committed the crime from which Satyendranath Banerjee was to profit, while he remained safely in the background. In this connection it should be observed that according to the plaintiff's version, it was Dr Ashutosh Das Gupta who prescribed and administered the poison and who withheld the bloody motions from Dr Calvert's inspection, and it was Mukunda Guin who sent the false telegrams. No criminal act seems to be assigned to Satyendranath Banerjee himself. If suspicion was aroused, it would fall on others but not on him. It is also significant that no suggestion is made that either Dr Ashutosh Das Gupta or Mukunda Guin shewed any signs of having acquired wealth, nor did they apparently join forces with Satyendranath Banerjee, after the party returned to Jaidebpur from Darjeeling. In other words, though Satyendranath Banerjee has prospered and prospered exceedingly, owing to his sister's widowhood, there is no reason to believe that any of the other persons who are supposed to have taken part in the conspiracy has prospered in any way.

CONCLUSION

I am convinced that there could not have been any conspiracy to murder Ramendra Narayan Roy, and, therefore, that there was no reason why Dr Calvert should write deliberately false letters or give a false certificate. For these

reasons I hold that Dr Calvert must have diagnosed biliary colic and must have treated Ramendra Narayan Ray for that complaint, and I hold further that the symptoms which appeared on May the 8th must have been due to the biliary colic, aggravated possibly by the pills of the prescription *Ex 51 (a)*, and that these pills were administered to Ramendra Narayan Roy in all good faith

PROCURING OF CERTIFICATES OF DEATH AND CREMATION

Before leaving this question of conspiracy I should like to deal with the suggestion that a false certificate of death was obtained from Dr Calvert and false certificates of cremation were obtained from other persons, by Satyendranath Banerjee

On behalf of the plaintiff it has been suggested that all these certificates were obtained by Satyendranath Banerjee

In view of this argument it is desirable to examine with some care the evidence shewing how these certificates were obtained. It may be stated at the outset that there is no single witness who states that Satyendranath Banerjee took any steps to obtain the certificates, and there is no document which shews clearly that he did so

Ex Z(120) (a) is a letter from Dr Calvert to Hari Mohan Chandra and reads

"Dear Rai Bahadur,

'Dr Pal asked me to send you this certificate on completion. Kindly acknowledge receipt. I shall be glad to receive my fees in due course

Yours faithfully,

J T Calvert "

To this letter Hari Mohan Chandra replied

Ex Z(120)

"Dear Sir,

I thank you for the Death Certificate of Kumar Ramendra Narayan Roy of Bhowal

I send Rs 32/- as your fee and shall be obliged if you will kindly send me a stamped receipt for the amount

Yours respectfully,

H M C "

This correspondence shews clearly that somebody from Jaidebpur commissioned Hari Mohan Chandra to obtain the certificate from Dr Calvert. There is, however, no letter from Jaidebpur to Hari Mohan Chandra, and no direct evidence as to who commissioned him to obtain the certificate. Our

attention was drawn to the following draft of a condolence letter which appears to have been sent by Hari Mohan Chandra to Ranendra Narayan Roy, the elder brother of Ramendra —

Ex Z(126)

"Darjeeling,
11-5-1909

"(My dear Raj Kumar Bahadur)

My dear Mr Sen,

It is extremely to be regretted that (your brother) Raj Kumar Ramendra Narayan Roy Chowdhuri of Bhowal has suddenly died I beg to offer my sincerest condolences to (you and) the family of the deceased and earnestly pray God may give (you and the family) them strength and courage enough to sustain (yourselves) themselves in their cruel bereavement

I am informed that it is the wish of (yourself and of) the wife of your much lamented deceased brother to do some work of public benefit at Darjeeling to commemorate the name of (your lamented brother) her deceased husband

I am just informed that Babu Mohendra Nath Banerjee has proposed to the wife of the deceased to give him some thousands of expenses for some of his purposes I beg to take the liberty of advising the eldest Kumar and the wife of the deceased and yourself not to give any money to Babu Mohendra Nath Banerjee for his purposes If the eldest Kumar and the wife of the deceased wish to do anything at Darjeeling to commemorate the name of the deceased, I should strongly advise (you and your deceased lamented brother's wife) them to subscribe Rs 30,000/- for the additional building required at the Sanitarium

As will be seen from the enclosed copy of the Committee's Circular on the subject, if Rs 30,000/- is subscribed, the upper floor of the building will be named after (your lamented brother) the deceased Kumar and which I think would be the most prominent and the fittest memorial to commemorate his name

I am going to call a public meeting at the Sanitarium to express sorrow at the death of the Kumar

Trusting all well with you,

I remain,
Yours sincerely,
Illegible "

(With Ex 317)

"To the Private Secretary to the Maharajadhiraj Bahadur of Burdwan

"My dear Mr Chatterjee,

You are aware that Kumar Ramendra Narayan Roy Chowdhury of Bhowal is dead I wish to call a public meeting at the Sanitarium Hall to express sorrow I think the fittest person to preside at the meeting (*struck off*)"

Particular emphasis was laid by Mr Chatterjee for the plaintiff on the figure of Rs 30,000/- mentioned in this letter, as this was the sum for which

Ramendra Narayan's life was insured Mr Chatterjee asked us to draw the conclusion from this letter that Satyendranath Banerjee was promising the amount of the insurance money to these Darjeeling residents in return for their assistance in procuring false certificates

In my opinion no such inference is justified In the first place, this letter is not evidence of any offer made by Satyendranath Banerjee It refers merely to gossip of which the writer had heard But, further than this, if it indicated that any proposal had been made by Satyendranath Banerjee, that proposal must have been made to Mohendra Nath Banerjee, the leader of the party opposed to Hari Mohan Chandra

Hari Mohan Chandra was in communication with Ramendra Narayan Roy, not with Satyendranath Banerjee If Satyendranath Banerjee took any steps to obtain the certificates, we might reasonably expect that he would approach Mohendra Nath Banerjee and not Hari Mohan Chandra to get the certificates

This draft read with letters *Ex Z(120) (a)* and *Z(120)* quoted above suggests that it was not Satyendranath Banerjee who obtained the certificates There is other material to confirm this conclusion The diary of Satyendranath Banerjee is silent regarding any steps taken by him at this time to obtain such certificates, though it refers to his other activities designed to safeguard his sister's interests At this period, Bibhabati Devi was living at Jaidebpur with her brothers-in-law and was shewing no inclination to join her brother Satyendranath Banerjee had, therefore, no right to act on her behalf There was also no reason at that time why the estate officers should not take the necessary steps in the matter

Later Satyendranath Banerjee succeeded in persuading his sister to come over to his side It is admitted that this did not occur until the 4th of November, 1909

The entries in Satyendranath Banerjee's diary under dates November 4th to November 5th are as follows

"Stay at Jaidebpur—Sister wants Rs 8,000/- in lump sum from the Chief Manager and also the Life Insurance Policy and papers from Jogen She appoints me her agent with powers to take all kinds of papers and documents from the Chief Manager on her behalf All important work requiring her signature will be postponed if I be not at Jaidebpur

Choto Kumar comes to Dacca I stay the night at Jaidebpur Kumar's drinking orgies at night, Ketu Dr's drunken dances" (*Ex 399(25)*), and

"The morning at Jaidebpur—photographic enlargements at Kumar's studio Sister writes to Mr C C Guillard, Resident Secretary of the City of Glasgow Life Insurance Co that she is the only legal heir of the late Kumar Ramendra being a childless widow, and hence entitled to the payment of the sum of Rs 30,000/- for which Ramendra's life was insured Come to Dacca by the midday train A letter from Sushil waiting—he writes to say that his father won't lend money It is not his practice Burra Kumar will be in a great fix Labh Chand has sent in a letter of Attorney demanding payment of about Rs 68,000/- and odd with interest at 12 per cent within 7 days

II train fare to Dacca
Cooley both places

15 As
2 "

(*Ex 399(29) (a)*)

A letter from the Manager of the Estate, F W Needham, to Ranendra Narayan Roy, dated 15th November, 1909 is to this effect —

"My dear Ranendra Sahib,

I have received a letter from the late second Kumar's widow, saying that she has instructed her brother, Babu Satyendranath Banerjee, to realise the money due on her late husband's Life Insurance Policy made with the City of Glasgow Insurance Co. She is evidently under the impression that the whole amount of the insurance money belongs to her, but this is not the case, as the premium was always paid by the Estate, and accordingly I think she is entitled by law only to a 1/3rd share of the same, as heir to her late husband's property, after deducting the loan of Rs 10,000/- (Rupees ten thousand) with the interests due on same, which was given to your late brother by the Insurance Co on his policy and which is entered in the list of the Bonded debts. However, if you and Rabindra Sahib are willing to forego your shares of this money in her favour, will you kindly let me have a note to this effect, and I will then do the needful, and apply to the Insurance Co for the money and will credit same to Srimati Bibhabati Devi Choudhurani's account, and she can draw the same whenever she wishes to do so. All the correspondence is however with her, and I can take no steps until she return the same to me. She also writes that she has made up her mind to take the succession certificate from the Original Side of the Hon'ble High Court. I do not know who has given her this advice, as the certificate must be applied for from the Dacca and other judges of the districts in which you have properties and there are none within the jurisdiction of the High Court.

Will you kindly inform her about this, and I will also write to her, on receiving your reply to this letter.

Yours very sincerely,

F W NEEDHAM,

Chief Manager,"

(Ex 60)

15-11-1909

These documents seem to me to indicate very clearly that steps had been taken by the estate officials in the first instance, and that the papers had been made over to Satyendranath Banerjee after November 4th. Mr Chatterjee drew our attention to the fact that the certificates first obtained were not accepted as sufficient by the Insurance Company and that a further certificate of cremation was given by Satyendranath Banerjee and C J Cabral in January, 1910. In this later certificate the age of Ramendra Narayan Roy was given as about 27 years exactly, as in Dr Calvert's certificate, though, in fact, Ramendra was only 25 at the time of his apparent death.

It has been argued that this coincidence proves that the statement of age in Dr Calvert's certificate must have been supplied by Satyendranath Banerjee. It seems to me much more reasonable to suppose that Satyendranath Banerjee was aware of the statements regarding the age of Ramendra in the earlier certificates and accepted those statements as correct.

The only other material on record to throw light on this matter is the absence of any entry in the accounts filed to shew that Dr Calvert's fee for the certificate was paid by the Estate. This single detail does not in my opinion justify the conclusion that Satyendranath Banerjee must have obtained and paid for the certificate of Dr Calvert, and the other evidence on record

suggests that he did not do so I am, therefore, of opinion that there is no sufficient reason for holding that the certificate granted by Dr Calvert in July, 1909, was granted at the instance of Satyendranath Banerjee

TIME OF DEATH

The next question to be examined is—When did the apparent death of Ramendra Narayan Roy take place? Was it at 11-45 P M as alleged by the defendants, or was it between 7-0 and 8-0 P M as the plaintiff argues?

DEFENCE EVIDENCE OF DEATH AT MIDNIGHT

All the evidence that came into existence before the arrival of the plaintiff in Dacca in the year 1921 goes to show that death occurred about midnight. The obituary notice which appeared in the "Bengalee" newspaper of May the 11th, 1909, stated that "the second Kumar of Bhowal breathed his last at about midnight". It is not known who was the correspondent who sent this message. The learned trial judge has drawn the inference that it was inspired by Satyendranath Banerjee, but the only reason for this inference is the fact that the notice supports the defence version. There is literally no evidence whatever to connect any one of the defendants with the despatch of this message.

Dr Calvert's letter of condolence to the elder brother of Ramendra Narayan does not mention the hour of death, and indeed gives no indication whatever as to the time, but Dr Calvert's certificate mentions the time of death as 11-45 P M. Mr Chatterjee for the plaintiff drew our attention to the sentence in the certificate which reads "The attack became acute on the morning of the 8th and he died the same evening", and asked us to accept this as proof that death took place shortly after dusk. The suggestion was that the time of death was supplied by the person who obtained the certificate from Dr Calvert, and that this sentence was Dr Calvert's contribution based on his own recollection. The entry 11-45 P M is in Dr Calvert's own handwriting. The plaintiff's version is that Dr Calvert was not present at the time of death and did not see the body after death. If so, Dr Calvert could not have been writing 'evening' in the sense in which the plaintiff wishes to read it, from his own knowledge. It seems to me much more probable that Dr Calvert after giving the exact time of death so far as he knew it, used the word 'evening' carelessly in this part of the affidavit. I do not think that any inference can justly be drawn from this affidavit in favour of death at dusk.

The letter written by Dr Calvert in 1921 in answer to a letter from J H Lindsay mentions that "the Kumar, however, did not recover from the collapse and died the same night".

The other documentary evidence of that period is the diary of Satyendranath Banerjee. The entry in this diary was not made until several days after the return of the party to Jaidebpur. The entry reads

"May 8th, Saturday, 1909

"Kumar Ramendra expired midnight, Darjeeling, "Step Aside" 4 doctors attended, one his family doctor Ashu Das Gupta. 2 Rai Bahadur Nibaran Ch

Ghosh 3 B B Sarkar, M D 4 Lt-Colonel Calvert They were all attending when he died His last words to me a minute before life was extinct were—"tell Ashu that I feel difficulty in breathing" Bibha began to have fits The doctors melted away Only 2 nurses remained, Sariff Khan was mad Sent Behara for Sejomama who came at about 3 in the morning Message to Uttarpura and Jaidebpur Sent man to the Sanitarium for men to get the corpse removed for funeral"

The circumstances in which this diary was written will be considered hereafter, but it will suffice to remark here that no convincing explanation has been offered why a false entry should have been made

JUDGE'S REASONS IN SUPPORT OF DEATH AT DUSK EXAMINED

The learned trial judge gave six reasons for holding that Ramendra Narayan Roy was taken for dead at dusk The learned advocate for the plaintiff has based his case on those six reasons and on the direct evidence of a witness named Ram Sing Subha This evidence and the learned judge's reasons must, therefore, be examined

Ram Sing Subha's evidence did not receive at the hands of the trial judge the critical examination it deserved This witness is one of the most important of all the witnesses examined by the plaintiff On his testimony the plaintiff relies for proof of a number of important facts It is necessary, therefore, to study his evidence and determine whether the witness is truthful and reliable, or whether, as the defence argue, he is obviously a perjured witness deliberately tutored to give false evidence The learned judge seems to have accepted Ram Sing Subha as a witness of truth—though with some hesitation

EVIDENCE OF RAM SING SUBHA

To appreciate the evidence of this witness it is necessary to go back to the Defamation case instituted by Dr Ashutosh Das Gupta in 1921 It is admitted that the prosecution in that case was conducted by the Bhowal Estate, and that the defence was financed by the plaintiff out of the subscriptions raised for him In that case the defence advanced a story that Ramendra Narayan Roy's body was taken out for cremation at night, that the funeral party were driven away by a sudden storm and that Ramendra Narayan was rescued by sannyasis They went further and adduced evidence to shew that one Pengumche, a Lepcha, was missing from the Darjeeling hospital from the night of May the 8th and they asserted categorically that it was the body of this Lepcha which was burned as the body of Ramendra Narayan Roy on the 9th of May The plaintiff was not a party to that criminal trial, and he cannot be held responsible for statements made or evidence given therein But in the year 1926, the plaintiff submitted a memorial to the Board of Revenue in which he accepted this story as true, and when J H Lindsay was cross-examined this story was put to him as a well known fact

"Q—Do you know that the books of the Victoria Hospital, Darjeeling, and the aunt's evidence go to show that the dead body found covered in the morning at "Step Aside" was that of a stout and

fair complexioned Lepcha, named Pengumche who was a warder of the said hospital?

A—No "

The story has since been dropped. The learned counsel for the plaintiff informed us blandly that he had not in fact given up this story, but he had decided not to offer evidence in proof of it, because the burden of proving whence the substituted body was obtained, did not lie upon his client. A more unconvincing explanation could scarcely be imagined. The great difficulty of obtaining a dead body to substitute in place of the missing body has been one of the main obstacles in the way of the plaintiff's success. It is simply incredible that the plaintiff should have withheld evidence shewing how the substituted body was obtained, if that evidence would bear inspection. The only reasonable inference, in my opinion, is that the evidence offered in the Defamation case would not bear inspection in the light of subsequent investigation into the matter.

Ram Sing Subha was the agent employed by the plaintiff to obtain the witnesses who deposed to the story of Pengumche in the Defamation case. This fact alone would go a long way to shake his credit.

The witness was cross-examined regarding his previous activities, and he flatly denied having made any efforts to procure witnesses, but when confronted with his own letters and telegrams, had to admit that he acted as *tadbirkar*.

There can be little doubt that this witness procured false evidence in the Defamation case, and then falsely denied having done so.

A DELIBERATE LIAR

His evidence in the present case seems to me to bear clear indications that the witness is a deliberate liar. An attempt was made in the lower court to prove that Bibhabati Devi was not allowed to attend her husband during his last illness, and that except for allowing her a last look at the dead body at about 9-0 P.M. when it was being taken out for cremation, she was kept locked in her own bedroom.

Ram Sing Subha was induced to support this story. His deposition runs

"I was going every day for 10 or 12 days when one day I did not find the second Kumar. Sala Babu said that he was ill and could not be seen. I went next day. That day also I did not meet the Kumar as Sala Babu said he was ill. I asked him what the illness was. Sala Babu said it was hill dysentery. Next day I went to Bannockburee Garden—I had to go to that every Saturday. I was there till 2-30 or 3 P.M. After that I went to the races at Lebong Parade Ground. I was there a little over an hour and a half. Then I came home. I took my meal. Some 2 hours after I came home I heard cries and a row at the "Step Aside". I went to the "Step Aside". It was then 7 or 7-30 P.M. I heard the crying going on—I got in and went upstairs. I went to a small bed-room towards the chowrasta. I found the second Kumar lying on a mattress spread on the matting on the floor. I found him dead and people said he was dead. The body was wholly covered, head to foot, by a white cloth. In the room I found Dr. B. B. Sarkar, Dr. Ashutosh and Sala Babu. They were seated on something

spread on the floor I was there for some 8 to 10 minutes I exchanged no conversations with these three persons there They were seated quiet I had heard below when coming upstairs that the Kumar had died The third room from the room in which the Kumar lay was a room with glazed doors I could see the Ram through the doors lying on an iron cot there, and crying aloud—very aloud The room in which the Ram was I found locked up from outside I saw the lock”

but in cross-examination he deposed

“In the room, marked A Ram lay locked up as I said The door lock was locked, there was no padlock I did not see if the key had been turned, but the door was shut ”

It is clear that he had no reason whatever for saying that the room was locked, and it seems to me equally clear that this was another piece of false evidence deliberately given

But the most striking part of this witness's evidence deals with the story of the abortive evening cremation He tries to suggest that he was informed of the disappearance of the dead body from the burning ghat on the night of the 8th of May Thus he deposes

“I returned home I went to bed I was feeling very sad After I had gone off to sleep, a Nepali boy servant of the Kumar woke me up The servant's name I remember It was Sree Lal There was no clock in my room when I was awakened The boy said that there was some *golmal*, and asked me to come (Question objected) I did not go I did not and said that I could not go as I was tired and never mind what was happening I do not know if Sree Lal is living

I did not met Sree Lal next day I mean I saw him next day in the *kutli* but had no speech then with me 10 or 12 days later, I asked him why he had gone to call me ”

It appears that in the Defamation case, he had been much more definite in his statements and had fixed the hour at which he had been roused by his servant

His cross-examination in this case reads

“Q —Did you say in the Defamation case that the Nepali servant called you 3 or 3½ hours after?

A —I was asleep and do not know how long after he came, but I might have said so

Q —“About 3 or 3½ hours after a Nepali servant of the Kumar went to me, woke me up and told me something”—did you say this in the Defamation case?

A —I might have said so, but I don't remember how long after he came”

The absurdity of his story is seen from a further statement in his examination-in-chief

“15 or 16 days after the cremation I described arose a rumour

Q —What was the rumour? (Objected to Allowed for a purpose)

A —That the second Kumar could not be cremated at night owing to rain and storm ”

This witness admittedly went to "Step Aside" on the morning of May the 9th, and made arrangements for a cot to be supplied, for carrying the corpse to the cremation ground. Yet he asked no questions regarding the previous night's cremation.

The whole story is too silly to merit serious consideration. I am satisfied that this witness is wholly unworthy of credit, that he gave false evidence and was coached in the false evidence he was to give.

Mr Chatterjee advanced two arguments in favour of believing this witness. As I have stated above, this witness procured the cot for the morning cremation, though Satyendranath Banerjee denied that he did so. We are asked to hold that because the witness told the truth in one unimportant detail, he must have told the truth throughout. This is a very unconvincing argument. The second argument urged in favour of the witness is that he was the first witness to mention the fact that Dr B B Sarkar saw Ramendra Narayan Roy during his illness.

VISIT OF DR B B SARKAR

This visit of Dr B B Sarkar is one of the incidents which has given rise to a good deal of argument. It is admitted now that Dr B B Sarkar came to the house for the first time between 6-0 P.M. and 7-0 P.M. on the 8th of May and saw Ramendra Narayan Roy. He seems to have examined the patient, felt his pulse, taken his temperature, etc., but he did not prescribe any treatment. The defence version of the visit is that Satyendranath Banerjee had gone out about dusk that day and had met his uncle Suryyanarain. Satyendranath had explained to Suryyanarain how ill Ramendra Narayan Roy was and that Dr Calvert and Dr Nibaran Sen were in attendance. Suryyanarain was himself in poor health and was being treated by Dr B B Sarkar, so he advised Satyendranath to consult Dr B B Sarkar. Satyendranath yielded and Suryyanarain brought in Dr Sarkar. Naturally as Dr Calvert was in charge, Dr Sarkar did not prescribe any treatment.

The plaintiff's version is that Dr Calvert and Dr Nibaran Sen had recognised that Ramendra Narayan Roy was dying and that nothing could be done to save him, so they had left him to his fate. But Bibhabati Devi (though locked in her room and not permitted to see her husband at this stage) had driven Satyendranath Banerjee out to find another doctor, and Satyendranath had brought in Dr B B Sarkar. Their further case is that Ramendra Narayan died just after Dr Sarkar's arrival, and this fact explains the absence of any treatment by this doctor. They allege that it was Dr B B Sarkar who pronounced Ramendra Narayan Roy to be dead.

For the plaintiff, it has been argued that the defence witnesses tried to suppress all knowledge of Dr B B Sarkar's visit, and that as Ram Sing Subha was the first witness to refer to it, he must be a truthful witness. The argument carries no weight with me. It is obvious that the contents of the diary of Satyendranath Banerjee were known to the plaintiff's advisers from the very beginning of the case. That diary refers to the fact that Dr B B Sarkar attended Ramendra Narayan Roy. Therefore this fact was well known to the plaintiff's advisers. It is further obvious that the visit of Dr B B Sarkar had no special significance, if the defence version is true. It was natural for the defence witnesses to omit any reference to it, if they remembered it. It would not be surprising if they had forgotten the visit.

None of the early witnesses for the defence were cross-examined about the visit, and the plaintiff's version of the visit was not put to them. They did not deny the visit, they merely omitted to refer to it. Not a single defence witness—so far as I am aware—denied the visit when it was put clearly to him.

As the plaintiff's advisers knew of Dr B B Sarkar's visit from Satyendranath Banerjee's diary, it was easy to instruct Ram Sing Subha to depose about it. The mere fact that Ram Sing Subha was cross-examined about the visit does not indicate that the visit was disputed, it merely indicates that the witness's truthfulness was questioned. That is the less surprising when it is considered that even on this topic the witness's evidence is obviously untrue. Thus he tries to make out that Dr B B Sarkar was one of the physicians who treated the patient throughout. As his evidence in cross-examination shews —

"Q—Did you know then which doctors were treating the Kumar, during Thursday, Friday and Saturday?

A—Nībaran Sen and Dr B B Sarkar

To Court—This I heard but did not see

I heard it from servants. I can't name them."

This is nobody's case and it is difficult to regard this as a *bona fide* mistake. This witness was the agent for the owner of "Step Aside" and resided near that house. He was the person who attended the needs of the tenants on behalf of his master. He was likely to attend on the morning of the cremation to render assistance. The mere fact that the witness did take part in the morning cremation and did depose truly about some unimportant details is no reason for overlooking the obvious lies he has told regarding other details. I regard the witness as one whose testimony on contentious matters carries no weight whatever.

OTHER REASONS COURSE OF ILLNESS

His reasons for believing that Ramendra Narayan Roy died between 7 and 8 P.M. have been given by the learned trial judge at pages 355 to 365 of his judgment.

The first reason given is that the course of illness points to death as near. In my opinion the reason is quite unsatisfactory and inconclusive. It is impossible to say with any certainty at what time the various symptoms upon which the learned trial judge dwelt actually occurred. There can be no doubt that there was collapse of the patient, that his body did get cold and that the body was rubbed with ginger powder before dusk. The learned trial judge held that the evidence established that collapse occurred about mid-day. I am not convinced by his reasoning, but it is not necessary, in my opinion, to decide whether collapse did or did not occur at that time. What is more important is the fact that no doctor has been asked to give an opinion whether death, even assuming the hours of the symptoms recorded, was likely to occur or not, or was more likely to have occurred at dusk than at midnight. It seems to me that nobody would hazard an opinion that because the patient began to get cold at a certain time death was more likely to have happened, say, within two hours than after six hours. It is true that we have no reason for holding from the symptoms alone that death could not have occurred at dusk, but we have also no reason for holding that death at dusk was more probable than death at mid-night. All the witnesses who were present in the house have asserted on oath that death took place at mid-night.

In the year 1921 Col Calvert wrote his letter *Ex Z(127)*, in reply to the letter of J H Lindsay Mr Chatterjee arguing on behalf of the plaintiff has contended that this letter shows honest memory and has further contended that it proves that Col Calvert was not present at the death of Ramendra Narayan Roy, and he has argued further that Dr Calvert must have left the patient about dusk after giving up all hopes of the patient's recovery. The last but one sentence in that letter reads "On my last visit his Bengalee medical practitioner was present, and arrangements made for the late Col Macrae, I M S, the I G C H, Bengal, to see him in consultation in the morning. Col Macrae had been Civil Surgeon at Dacca and knew the family". This letter seems to me to indicate that Dr Calvert at all events did not anticipate that Ramendra Narayan Roy would die before the following morning. If, as the plaintiff's party contend, Calvert left about dusk and did not see the patient again, he must have left expecting to see him on the following morning. I am of opinion that the evidence on record with regard to the progress of the illness does not indicate that death at dusk was more probable than death at mid-night.

NO REPLY TO BARA KUMAR'S TELEGRAM

The second reason given by the learned trial judge is that no telegram was sent from Darjeeling in reply to the telegram of Ramendra Narayan Roy which was despatched from Jaidebpur at 3-10 P M standard and which was in these words "Very anxious. Wire condition very often. Treat with best medical help. Wire immediately present condition." It is argued that this telegram must have been delivered in Darjeeling at about 6 P M and that if Ramendra Narayan lived for any length of time after 6 P M, an answer stating his condition at that time would have been sent. In my opinion, the argument is inconclusive. We do not know at what time the telegram was received, whether it was received in time for an answer to be sent that night, or whether it was received at such a late hour that the party in Darjeeling considered it desirable to wait until the morning before replying. It seems to me impossible to argue from the fact that no answer was sent to this telegram that death must have occurred before mid-night.

INFERENCE FROM DR B B SARKAR'S VISIT

The third reason advanced by the learned trial judge is in connection with the visit of Dr B B Sarkar to "Step Aside" on the night of the 8th of May. It has been argued on behalf of the plaintiff that Dr Calvert and Dr Nibaran Sen had given up the case as hopeless and had left for home somewhere about sunset, and that thereafter presumably on pressure from Bibhabati Devi Satyendranath Banerjee had been sent out in search of another doctor. Satyen has deposed that he went out about dusk on that evening and that by chance he met his uncle Suryyanarain near the *Chowrasta* just before dusk and had a conversation with Suryyanarain about Ramendra's condition. He states further that it was his uncle who brought Dr B B Sarkar to the house, but he denies that it was he who asked Suryyanarain to bring a doctor. The question put to him was "I am putting it to you that you asked Suryyanarain Babu to bring a doctor because you knew that neither Dr Calvert nor Nibaran Sen was at the 'Step Aside'?" It has been argued that Dr Calvert's evidence shows that he (Dr Calvert) was not at "Step Aside" when Dr B B Sarkar

was called in. In the interrogatories for the examination of Dr Calvert question 14 reads "Did you know Rai Bahadur Nibaran Chandra Sen, Assistant Surgeon of Darjeeling in 1909? If so, did he attend the Kumar during his last illness in Darjeeling?", and the answer to that was, "Yes He did" Question 15 reads "Do you remember if any other physician attended the Kumar during his last illness? If so, can you name any?" The answers are "I remember the Kumar had his own private medical attendant who was present during his illness. I can't remember his name", and in cross-examination he stated "He had his own physician with him and Dr Nibaran Chandra Sen of the Victoria Hospital" From this evidence it is argued that Dr Sarkar must have come to the house at a time when Dr Calvert was not present

The evidence of the witnesses is conflicting. Bibhabati deposed "When Suryyanaram came with the doctor, Drs Calvert and Nibaran were in the "Step Aside" I believe. I have direct knowledge of that in the sense that they were coming and seeing the Kumar every now and then, and that was not possible unless they were in the house" Again, in answer to the question, "I put it to you that you cannot deny on oath that when this doctor came Drs Calvert and Nibaran were not in the house?", she answered, "I say they were in the house"

She was asked, "Can you swear they were?", and she answered, "I did not see them seated in the house, but they were coming in so frequently that they must have been in the house"

Dr Ashutosh Das Gupta deposed as follows "Dr Sarkar came at dusk or a little after dusk. He came at about 8 P.M. Col Calvert was there when Dr Sarkar came. Dr Nibaran Sen was also present then. When Dr Sarkar called, Dr Calvert and Nibaran Sen were in the room in which the Kumar was or in the next room. I can't say who called Dr Sarkar. I heard afterwards, 1 or 2 years ago, who had called them. I do not remember from whom. I heard it at Dacca or Jaidebpur. I can't say whether I heard it a year ago or two years ago. I knew who had brought him. Dr B. B. Sarkar examined the Kumar with his stethoscope and felt his pulse. When he did so, Dr Nibaran and Dr Calvert and I were present"

It has been argued with some force that a junior doctor like Dr B. B. Sarkar could not possibly have examined the patient in the presence of or to the knowledge of a doctor of the standing of Dr Calvert. Dr Calvert was one of the leading physicians in the province. Dr Sarkar was an ordinary doctor with little or no practice. It seems to me, therefore, that it is unlikely that Dr Sarkar examined the patient in the presence of Dr Calvert, and I think further that the evidence of the witnesses taken as a whole indicates that they have no clear recollection whether in fact Dr Calvert was present when Dr Sarkar examined the patient. It is an admitted fact that Dr Sarkar did not prescribe for the patient, nor did he interfere in any way with the treatment. I am not satisfied that it is impossible for Suryyanaram to have brought in his own doctor and for that doctor to have examined the patient and given an opinion to the relatives regarding his condition, even though the case was in charge of Dr Calvert. I think this may have been done at a time when Dr Calvert was not in the room, but it does not follow that it was done at a time when Dr Calvert had given up the case. Dr Calvert may have been in another room, it may be that this visit occurred after Dr Calvert had gone home for his dinner and before he returned after dinner. It is impossible in my opinion to attach very great importance to the statement of the witnesses regarding the exact time when each event happened.

I do not think, therefore, that the visit of Dr Sarkar establishes that Dr Calvert and Dr Nibaran had given up the case as hopeless. Mr Chatterjee drew our attention to the evidence of Bibhabati Devi regarding the result of Dr Sarkar's examination. The evidence is as follows: "This doctor after examining the Kumar said, did he not, that the Kumar had gone past all hope?" The answer was, "He did not say that in my presence." The next question put was, "Did you not cry loudly at or a little after dusk?" The answer was, "No. When my *mama* talked to me after the doctor had examined the Kumar, tears came into my eyes, but I did not cry aloud." The learned counsel for the plaintiff has argued that this evidence of Bibhabati shows that Dr Sarkar announced to her that her husband was already dead and that she burst into tears. This interpretation seems to me wholly unjustifiable.

The diary of Dr B. B. Sarkar, *Ex Z(215)*, was produced by his widow. Dr B. B. Sarkar is dead and was not available as a witness. Under the head of 8th of May there is an entry, "Kumar of Bhowal some hours." This entry does not indicate that he was present at the death of Ramendra Narayan Roy.

TELEGRAM OF DEATH

The fourth reason given by the learned trial judge for his conclusion as to the time of death is based on the fact that the telegram sent from Darjeeling to Jaidebpur announcing the death of Ramendra Narayan Roy has not been produced by the defendants. There can be no doubt that a telegram was sent, and Satyen's diary contains an entry under date 8th of May to the effect that messages were sent to Uttarpara and Jaidebpur. From the fact that this entry is under the date 8th of May the learned counsel for the plaintiff has argued that the telegram to Jaidebpur must have been sent before mid-night on the 8th. This argument is singularly unconvincing. The first entry under this date reads: "Kumar Ramendra expired midnight." The sentence preceding that regarding the messages to Uttarpara and Jaidebpur reads: "Sent Behara for *Sejomama* who came at about 3 in the morning." This diary was not written until at least ten days or a fortnight after the 8th of May. It seems to me quite impossible to draw any inference as to the time when this telegram was sent from the entry in the diary. In his evidence Satyendra-nath Banerjee states that he did not see at any time the telegram sent from Darjeeling announcing the second Kumar's death. He admitted that the phrase 'messages to Uttarpara and Jaidebpur' in his diary meant telegraphic messages were sent, but he added that he could not say who actually wrote the messages. The evidence of the other members of the Darjeeling party is equally unsatisfactory. The evidence of Birendra Chandra Banerjee in the Sripur case was that after the death on the night of death Dr Calvert sent a telegram to Jaidebpur reporting the death of the second Kumar. In his evidence in this court he deposed: "I do not know whether Dr Calvert sent a telegram to Jaidebpur that night. I do not know whether any telegram was sent that night. Dr Calvert was requested to send a telegram in my presence, and because of this request I believe a telegram was sent." Dr Ashutosh Das Gupta in his evidence was asked: "Is it true Dr Calvert did not send any telegram to Jaidebpur?", and he answered, "I do not remember his sending any." From this evidence it appears that either the witnesses or the Darjeeling party have no clear recollection regarding the sending of the telegram, or else they are deliberately suppressing information on the point.

The telegram was delivered at Jaidebpur on the morning of the 9th of May. It appears that after receipt of the telegram of the 8th of May Ramendra

Narayan's younger brother Rabindra Narayan Roy had decided to go to Darjeeling to attend on his brother. He had set out from the Rajbari in time to catch the 8-30 A M train from Jaidebpur station. As he and his party were approaching the station, a peon delivered to them a telegram announcing the death. Thereupon Rabindra Narayan and his party returned weeping. There can be no doubt whatever that the telegram announcing the death was delivered at Jaidebpur between 8 and 8-30 in the morning of the 9th. That telegram has not been produced. The defendants have offered an explanation for the non-production of the telegram. They state that the telegram is no longer in their possession or at all events cannot be traced.

DEFENCE EXPLANATION FOR NON-PRODUCTION

It appears that on the 5th of December, 1916, Saraju Bala Devi, widow of the eldest of the three brothers, wrote a letter to F W Needham, Manager, under the Court of Wards, at Jaidebpur as follows: "Sir, my husband's papers are lying in a box or two in Private Secretary's office, my servant Tana will point out the boxes to you, the papers are required for the allocation purposes. I have to request you will kindly deliver the same to my servant Tana. The papers have no connection with your Estate management, but they are Accounts, Vouchers, Receipts, Bills, Memos, so forth, what are required for allocation purposes. You can keep a list of the papers if you like. Yours faithfully, Sarajubala Devi" (*Ex 370*). On this F W Needham passed an order directing that the Private Secretary would make a list of the papers. Thereafter on the 10th of December, 1916, the Private Secretary Jogendra Nath Banerjee wrote to Saraju Bala Devi stating that he would have the list and papers despatched as early as possible. This letter is *Ex 372*. It appears that the letters were not despatched until 18th April, 1917, for we have a letter of that date from F W Needham to Saraju Bala Devi which reads: "Dear Madam, with reference to your No 660, dated 5-12-16, I have the honour to send by railway parcel all private letters etc. of the late eldest Kumar that were found in a box in Private Secretary's office, keeping a list thereof in my office as requested in your letter under reference. The railway receipt together with a copy of the list is enclosed. Please acknowledge receipt and oblige. I remain, Yours faithfully, F W Needham, Manager" (*Ex 65*). The defendants did not produce in court a copy of the list retained by F W Needham. It appears that the list sent to Saraju Bala Devi was produced in court during the examination of the witness Ashutosh Das Gupta, but was returned to her through oversight. Neither the original nor the copy was thereafter produced in the lower court, and the lower court was, therefore, not in a position to state whether that list contained any reference to the telegram. The other telegrams sent from Jaidebpur during the illness were admittedly made over to Saraju Bala Devi. We directed the Court of Wards and Saraju Bala Devi to produce their copies of this list, and ultimately the list which was sent to Saraju Bala Devi was produced in court before us. That list has been examined and we find that there is nothing in the list to indicate that the telegram of death was, in fact, sent to Saraju Bala Devi.

After the appearance of the plaintiff in Dacca in the year 1921 J H. Lindsay, Collector of Dacca, wrote to Saraju Bala Devi a letter (*Ex 55*) in these terms: "Dear Madam, Kindly let me have in original for perusal, all the letters and telegrams in connection with the illness, death and cremation of the late second Kumar of Bhowal which passed between the first Kumar

of Bhowal and the persons' who went with the second Kumar to Darjeeling. I am told that they are in your custody Yours sincerely, J H Lindsay, Collector, Dacca " In answer to this letter Saraju Bala Devi forwarded to J H Lindsay all letters and telegrams received by her, and when she deposed in this suit on commission she filed a list of the telegrams which she had sent to J H Lindsay That list is *Ex 260* It contains all the telegrams to which reference has already been made in this judgment It seems, therefore, that the telegram announcing the death was not sent to Saraju Bala Devi in 1916 No reason why it should have been withheld at that time has been advanced, and I can only assume that it was not sent because it was not found among the papers of Ranendra Narayan Roy A reasonable inference from this correspondence would be that the telegram had been lost or mislaid before April, 1927

The learned counsel for the plaintiff, however, has drawn our attention to the evidence of Sarada Prasanna Ghosh who was examined on commission in this case Sarada Prasanna Ghosh was Wards Deputy Collector at Dacca from 1923 to 1925 The papers in the Collectorate connected with the appearance of the present plaintiff and his claim to be Ramendra Narayan Roy were in charge of this gentleman He deposed that he as Wards Deputy Collector read the telegram about the death of the second Kumar coming to the eldest Kumar from Darjeeling But this is the translation of his evidence which appears in the paper book "I, as Wards Deputy Collector, went through the telegram about the death of the second Kumar coming to the eldest Kumar from Darjeeling" Mr Chaudhuri for the defendants has argued that the correct translation of his evidence is that he had read as Wards Deputy Collector the fact that a telegram announcing the death of the second Kumar had been despatched from Darjeeling I hesitate to say that this translation is not a possible translation of the statement of the witness, but it seems to me more likely that the translation given in the paper book is correct and that the witness stated that he had actually seen the telegram That telegram is not forthcoming, and the inference has been drawn by the learned trial judge that that telegram has been withheld and has been withheld because its contents would not support the defendants' case

ORAL EVIDENCE AS TO CONTENTS

The other circumstances, however, have convinced me that this inference is not justified Both parties have given oral evidence as to the contents of the telegram For the defendants Phan Bhusan Banerjee, a distant relative of Rabindra Narayan Roy, deposed that he remembered the contents of the telegram and that it read "*Heart rends to write Kumar expired last midnight*" For the plaintiff Sati Nath Banerjee deposed as follows "Next morning at about 8, Chhoto Kumar and I set out for the station to catch the 9 o'clock train When we were in the east of the Post Office a man handed a telegram to Chhoto Kumar Chhoto Kumar tore the cover open and asked কতখি লেখচে (see what it writes) I saw it I read "*Mejo (or Mejo Kumar,— I don't remember whether Mejo or Mejo Kumar) expired this evening*" This I distinctly remember I said to Chhoto Kumar সব শেষ হয় গেছে (All is over) "

In order to understand how the telegram came to be delivered at Jaidebpur between 8 and 8-30 A M we called for the Post Office Guide of the year 1909, and the same was produced in court That Guide shows that

ordinarily Darjeeling Post Office was open for the receipt and despatch of telegrams from 7 hours to 21 hours on week days, from 8 hours to 10 hours and from 16 hours to 18 hours on Sundays whereas the Darjeeling Railway Telegraph Office was open for the receipt and despatch of telegrams from 6-30 hours to 21 hours both on week days and Sundays. The Jaidebpur Post Office was open for the receipt and despatch of telegrams from 7 hours to 9 hours and from 12 hours to 17 hours on week days and from 8 hours to 9 hours and 16 hours to 17 hours on Sundays whereas Jaidebpur Railway Telegraph Office was open for the receipt and despatch of telegrams for 24 hours every day, week day or Sunday. Under the rules in force at the time ordinary telegrams could be received at the various offices during the hours mentioned above. Express telegrams could be received at any time for despatch, though if they were received after hours a late fee was required. But telegrams were only received after hours if the terminal office was open or its attention could be gained. It was further provided in the rules that telegrams could not be received after hours at Railway Telegraph Offices even though late fees were offered, and that telegrams were not despatched to Railway Telegraph Offices after those offices were closed. It is obvious, therefore, that if a telegram was sent from Darjeeling on the 8th of May, it could have been sent before 9 P.M. either from the Post Office or from the Railway Telegraph Office, but it could not have been despatched from either of those offices to the Jaidebpur Post Office on that night. It would have to be despatched to the Jaidebpur Railway Telegraph Office. If the telegram was despatched on the morning of the 9th of May which was a Sunday, it could have been despatched in the ordinary way from the Darjeeling Head Office after 8 A.M. or before that hour on payment of a late fee, or from the Darjeeling Railway Telegraph Office after 6-30 A.M. Jaidebpur Railway Telegraph Office was open for the receipt and despatch of telegrams, day and night, and it was the duty of the officer on duty at the telegraph office to deliver a telegram received by him as soon as possible.

HOUR OF RECEIPT AT JAIDEBPUR

In this connection it is interesting to read the evidence of one Niranjan Roy who deposed on behalf of the plaintiff in this case. This witness is a Railway servant and deposes that he was a Signaller at Jaidebpur Railway Telegraph Office on the 9th of May, 1909. His evidence reads as follows: "I have no recollection but perhaps a telegram announcing death of Kumar came that night. I could say definitely if I am shown a copy of that. Such recollection as I have I am speaking from, as there was, I remember, a *golmal* (row) at the station that the Kumar was dead. I would be generally at the station even when off duty as my *basha* was quite close." In cross-examination the witness stated: "The *golmal* over second Kumar I spoke to was at about 9-30 or 10 P.M. It was a *golmal* among the staff. No outsiders would then be present at that hour." The question was put to him, "Did you send for information at the Rajbari?" Answer was "No." The suggestion was that the telegram announcing death was received at the Railway Telegraph Office at about 9-30 or 10 P.M. on the night of the 8th of May. In re-examination a question was put to the same witness as follows: "If a message had come, can you (sic) and if it was not sent to the Palace, can you explain why? (Objected to. Allowed)", to which he answered, "Possibly, not to upset the Rajbari. There was no train at night for anybody going to Darjeeling. The earliest train would be about 8 o'clock next morning." The

learned trial judge has accepted the evidence of this witness as truthful evidence and has come to the conclusion that the telegram was received between 9-30 and 10 P M and was withheld by the station staff in order that the family might not be upset that night To my mind, this story is too fanciful I cannot believe that a telegram received before 10 P M would be withheld by the Telegraph Office in order that the family of the recipient should not be upset The Telegraph Rules require that a telegram received at the Railway Station should be immediately despatched by a messenger The position of the Bhowal family at Jaidebpur was such that it is certain that these instructions would be strictly followed in their case, and that there would be no neglect or delay in the delivery of important telegrams addressed to them I am satisfied that the evidence of this witness is false evidence, and I am satisfied that the telegram must have been delivered immediately after it was received, and that, therefore, the telegram was not received in Jaidebpur until 8 A M at the earliest It is the case for the plaintiff that the telegram was received at the Railway Telegraph Office The defendants have not made a definite case whether it was received at the Railway Telegraph Office or at the Postal Telegraph Office It is true that one witness states that the telegram was delivered by a postal peon, but it seems to me that this is a detail which he could not possibly remember and on which no reliance could be placed The fact that the telegram was received at 8 A M or within a few minutes thereafter suggests that it must have been received at the Jaidebpur Railway Telegraph Office, most of the other telegrams sent from Darjeeling to Jaidebpur during the course of the illness were sent from the Railway Telegraph office at Darjeeling to the Railway Telegraph Office at Jaidebpur, and in view of the fact that the Railway Telegraph Office at Darjeeling was open at 6-30, whereas the other telegraph office was not open till 8 A M, it seems at least highly probable that the telegram announcing death was despatched from the Railway Telegraph Office at Darjeeling somewhere about 6-30 A M In view of the rules contained in the Post and Telegraph Guide, the telegram could not have been despatched from the Darjeeling Postal Telegraph Office after hours if it was despatched to the Jaidebpur Railway Telegraph Office, it could not have been despatched after hours if it was sent from the Darjeeling Railway Telegraph Office Therefore, it seems to me that no telegram could have been sent on the night of May the 8th to arrive at Jaidebpur Railway Telegraph Office at 8 A M on Sunday, May the 9th In other words, the telegram announcing death must have been sent some time in the morning of May the 9th If that is so, the telegram could not have read "Mejo expired this evening", if he had expired on the previous day Moreover, if the telegram was not sent until the morning of May the 9th, it was not sent until, according to the plaintiff, a substitute body had been obtained and a sham funeral decided upon and until after the conspirators had decided to assert falsely that the death was at midnight These circumstances seem to me to indicate beyond all possible doubt that the telegram announcing death was sent on the morning of May the 9th and could not have supported the plaintiff's case I hold, therefore, that the evidence regarding the telegram of death far from supporting the plaintiff's case supports the case put forward by the defendants

NO COOKING AT 'STEP ASIDE' THAT NIGHT

Another reason advanced by the learned trial judge for holding that death occurred at dusk was that one of the witnesses asserted that no cooking took

place that evening at "Step Aside" It is contended that it was because Ramendra Narayan Roy had apparently died that no cooking took place. The evidence whether there was cooking or not is most conflicting. Some witnesses say there was cooking, some say there was not. It seems to me impossible after this lapse of time for witnesses to remember such a detail. Whether in view of the serious condition of Ramendra Narayan Roy after sunset people delayed taking their meals until a late hour, and then owing to his death did not dine at all, or whether owing to their anxiety no meals were prepared are details which it is impossible now to determine. I am unable to decide from the evidence adduced whether or not there was any cooking in "Step Aside" that night.

EVIDENCE OF PROF S N MAITRA

The most important evidence on which the learned trial judge has relied in order to come to his finding regarding death at dusk is the evidence of Mr S N Maitra, a member of the Indian Educational Service, who deposed in this case on behalf of the plaintiff. Mr S N Maitra was staying in Darjeeling during the summer vacation of 1909. He was staying in Lewis Jubilee Sanitarium from the third week in April to the third week in June. He deposed that before 8 P.M. one night he got news of the death of the Kumar of Bhowal. His evidence is so important that it ought to be quoted in full. "In 1909 I went to Darjeeling during summer vacation. I went to Darjeeling during the long vacation—from 3rd week in April to 3rd week in June. In May, 1909, I was at Darjeeling. I stayed at Lewis Jubilee Sanitarium. I was there with my wife. In May, 1909, I do remember receiving news of the death of the Kumar of Bhowal. I got this news in the evening. It must have been before I had taken my dinner. That is, it must have been before eight. I was in the Common Room of the Nripendra Narain Hall of the Sanitarium. There were several friends there. I distinctly remember that there was a group attached to the National College. One of them was Radha Kamal or Radha Kumud, who is now Professor at Lucknow—the elder of the two brothers, Radha Kamal and Radha Kumud. Babu Haran Chandra Chakladar was also there. There was another man whose face I remember. There was probably one Nibaran Mukherjee, but of him I am not sure. I am also absolutely sure of the National College group, but there was also a young man who was a Zamindar of North Bengal and another of East Bengal. We were seated in the Common Room when news was brought to us that some Kumar of Bhowal had just died, and the man who brought the news presumably made a request for men to carry the dead body to the burning ghat. Of the request I am absolutely sure. I did not go to the cremation ground. I did not go and possibly because I was told that the burning ground was a long way down a steep hillside and there was no knowing when I was going to come back and my wife was there. I felt an impulse to go with the party going, but did not."

Mr Maitra was a man of culture, of position and acknowledged probity. His love of truth and the care he took to make sure that he always spoke the truth are well known. The learned counsel on both sides entertained us with anecdotes illustrating the care that Mr Maitra always took to ensure that his statements were truthful and accurate. There can be no possible doubt that this witness gave evidence which he believed to be strictly true. But in order to determine whether his evidence can be relied upon, other circumstances connected with it must be referred to. On the following Sunday, that

is to say, on the 16th of May, 1909, a public meeting was held at the hall of the Lewis Jubilee Sanitarium to express sorrow at the sudden death of Raj Kumar Ramendra Narayan Roy of Bhowal. That meeting was attended by Mr S N Maitra. Mr S N Maitra was a gentleman in great demand as a vocalist at public meetings, and on that occasion Mr S N Maitra was persuaded to sing. After having sung one song he was cheered and encored. Mr Maitra was at first reluctant to sing the second song, but his reluctance was overcome. The reason for his reluctance and the manner in which it was overcome appears from the evidence of Hiralal Roy, another witness examined on behalf of the plaintiff. This witness deposed as follows: "I remember the condolence meeting. Professor Maitra was there and Dr Mukherjee was there and perhaps Mr Rakshit also. At this meeting Professor Maitra sang

Q—What was the effect of that? (Objected to Allowed)

A—There was a request for more songs—by claps and by words also. And he sang one or two more songs. Dr Maitra did not straightway agree to sing.

Q—Why? (Objected to Allowed)

A—Because he had conscious (conscientious) objections.

To Court—This he did not say at the meeting.

How were his conscientious objections got over? (Objected to Allowed)

It was suggested that the Raj family might contribute something to the Sanitarium. Mr Maitra's objection was that he did not know the Kumar and that Kumar did not bear good reputation."

A FREAK OF MEMORY

It is interesting to note that though Mr Maitra deposed that he remembers a man coming with the news of the death of Ramendra Narayan Roy, he had completely forgotten the condolence meeting on the following Sunday. He had completely forgotten the fact that he had sung at the meeting. In fact, he said, "My mind is a blank with regard to this meeting, yes, perfect blank unaided by the minutes, but I recollect that I did attend some meetings." Mr Maitra, as I have stated before, was a man of culture and a resident of Calcutta, interested in intellectual subjects, whereas Ramendra Narayan Roy was a man of Eastern Bengal, a man who shunned society, judging from Mr Chatterjee's description, he was an unlettered oaf who spent his days with stable boys and his nights with harlots. It is obvious that there could have been no community of interest between him and Mr S N Maitra. It appears from the evidence that the latter made no note about this particular incident, that he had no interest in Ramendra Narayan Roy before the incident, that he had no reason to suppose that anything strange happened in connection with the reported death of Ramendra Narayan Roy, and that he had no reason to think of this incident again, until many years later. It was a matter in which he was not in the least interested. The same witness was questioned whether he remembered the time of the day or the circumstances under which the deaths of people in whom he was personally interested

were reported to him, and he said frankly that he did not remember. It is obvious, therefore, that the nature of the news given to him was not such that he was bound to remember. It is obvious that he was not particularly interested in the person of Ramendra Narayan Roy that he should remember the news, and it is obvious that he had no reason to think of this incident for many years after. It has been assumed in the course of the arguments that when a witness of undoubted honesty deposes regarding past events his evidence must necessarily be accurate. It is assumed in the argument that a person of Mr Maitra's acknowledged probity would state that he did not remember an incident, if, in fact, he did not remember it accurately. But this seems to me contrary to every day experience. It frequently happens that people of undoubted honesty, when attempting to reconstruct incidents from the distant past, reconstruct them quite wrongly, and often describe incidents of which they have no knowledge or describe incidents of which they have knowledge in a manner quite the opposite of the truth. It is obvious that it was a curious freak of memory that made Mr Maitra remember this particular incident at all, and it does not seem to me to follow necessarily that his memory is reliable.

OTHER WITNESSES OF MAITRA GROUP

Three other witnesses deposed in support of Mr Maitra. They are Dr Radha Kumud Mukherjee, Hiralal Roy and Nagendra Rakshit. Mr. Maitra was examined on the 8th of June, 1934. The next member of this group was not examined until the 22nd of August in that year. That witness was Radha Kumud Mukherjee. His evidence as to the circumstances under which he deposed and how he came to remember the incident is interesting. He deposed that a month before he was examined he understood that he would have to depose, but he apprehended trouble when he read in the "Statesman" Principal Maitra's evidence, and again, he stated that he carefully noted that evidence on account of its possibilities for him. The reading of that evidence refreshed his memory on this particular point. He added that he took no interest in the Kumar of Bhowal either before or after the incident. It appears further that after Mr S N Maitra deposed and before Dr Radha Kumud Mukherjee and Hiralal Roy deposed, the two latter gentlemen met together and discussed the evidence they were about to give. It is clear from the evidence of Radha Kumud Mukherjee that he learnt the details of the condolence meeting in his discussion with Hiralal Roy. The evidence of these gentlemen is not, therefore, in my opinion, independent evidence. Their memories were refreshed by a perusal, as stated by Radha Kumud Mukherjee, of the evidence given by Mr. S N Maitra. Mr S N. Maitra's reputation of strict truthfulness was such that these witnesses would naturally accept his statement without question. I do not regard the evidence of these witnesses as adding any value to the evidence of Mr S N Maitra. Their evidence is a testimony to their confidence in Mr S N Maitra's truthfulness and adds nothing to the value of his evidence.

HONEST BUT MISTAKEN

As I stated before, there can be no doubt that the evidence of Mr S N Maitra and these other gentlemen has been honestly given. It was easy for them to make a mistake, and in my view, the fact that the incident which they

described was one in which they were not personally interested, makes it all the more probable that they were mistaken in their recollection. It happens that there are cogent reasons for holding that these witnesses have made a mistake. S. N. Maitra deposed that Haran Chandra Chakladar was one of the group of persons present at the Sanitarium when this news was given. Haran Chandra Chakladar is a witness as honest and as respectable as any of those in the Maitra group, and he does not support their evidence. He has deposed on behalf of the defence and has deposed to the fact that he attended the morning cremation. He said nothing whatever about any person giving information of the death of Ramendra Narayan Roy as early as 8 P.M. on the night of the 8th May. Furthermore, when Haran Chandra Chakladar deposed he stated that he shared a room at the Sanitarium with Radha Kumud Mukherjee. Haran Chandra Chakladar deposed on commission in March, 1931. Radha Kumud Mukherjee was examined in court in 1934 and he did not contradict the statement. Hiralal Roy, another member of the Maitra group, admitted too that Haran Chandra Chakladar was one of their party and admitted further that Haran Chandra Chakladar went to the cremation of Ramendra Narayan Roy, and that he, the witness, knew this fact in May or June, 1909. It is perfectly obvious, therefore, that if anything extraordinary had happened, it must have been known to Haran Chandra Chakladar and also to these members of the Maitra group. Yet none of these gentlemen heard of anything extraordinary in connection with the death of Ramendra Narayan Roy. None of them heard of an abortive attempt at cremation on the night of the 9th. None of them heard of the disappearance of the body from the cremation ground, and none of them heard that a second cremation procession was necessary. In fact, so far as they were aware, there was nothing unusual in the death and cremation of Ramendra Narayan Roy. If their evidence is accurate, they must have heard of the evening cremation procession and its failure, and of the morning cremation procession. The fact that they did not do so seems to me to indicate very clearly that they were mistaken in their present recollection.

JUDGE'S WRONG METHOD OF APPROACH

In dealing with this matter the learned trial judge has argued that in view of the evidence of these witnesses and in view also of certain other circumstances, the apparent death of Ramendra Narayan Roy must have occurred at about dusk on May the 8th and, therefore, there must have been an evening cremation. In my opinion, this is not the best method of approaching the problem. These gentlemen were not interested in Ramendra Narayan Roy. They did not go to his cremation. They did not do anything as a result of the message which they said they had heard. There was no conduct of their own which they might reasonably remember, and they had no reason whatever to keep in mind this particular incident. These gentlemen, for the most part, forgot the only part that they themselves took, namely, their attendance at the condolence meeting, and in the case of S. N. Maitra, the fact that he sang thereat. A cremation is a public affair, that of a wealthy man who certainly behaved as an independent prince and, therefore, a person of great consequence would necessarily be accompanied by considerable display. When the morning cremation took place, there was admittedly considerable display. Armed orderlies went at the head of the procession with arms reversed, crowds collected and the body was taken to the cremation ground with cries of 'haribol', 'haribol', and coins were scattered. In other words, every attempt was made to attract attention, and

we might naturally expect that there would be the same publicity at the time of the evening cremation. Such being the case, one might reasonably expect convincing evidence of the fact that an evening cremation took place. We have every reason to expect the evidence of persons who saw that cremation and of persons who took part therein. In my opinion, the argument should, therefore, be on these lines. If an evening cremation is proved to have taken place, it must follow that the evidence of S N Maitra and his companions is not only honest but accurate. If, on the other hand, it is shown that no evening procession took place, it must follow that the evidence of these gentlemen is incorrect. Because if there was no evening cremation, there was no reason for the fabrication of false evidence as to the time of death, and consequently, no reason for refusing to accept the time given in the obituary notice of May the 10th, the time mentioned in Satyendranath Banerjee's diary written up sometime during May, 1909, or the time given in Dr Calvert's certificate of death given in the month of July, 1909. As will appear later in this judgment, I am satisfied that there was, in fact, no evening cremation, and consequently, I am convinced that the evidence of S N Maitra and his companions, honest though it is, is inaccurate.

KALIDAS PAL'S EVIDENCE

In this connection the learned trial judge has referred to the evidence of Kalidas Pal and Madhusudan Mukherjee. The evidence of Kalidas Pal is interesting. Kalidas Pal deposed on commission for the plaintiff in August, 1931. He stated that he was residing at the old Cutchery Building in May, 1909 and that at about 9 or half past nine one night men on behalf of Ramendra Narayan Roy came and gave the death report and asked for Brahmins to carry the body to the cremation ground. He adds that neither he nor his friends were willing to go, and further, that all of his friends stated, "it is absolutely impossible to go to the cremation ground at that hour of night. Please come to-morrow." The witness proceeded to say that he did not go on the following day, but that his friends all went on the following day. It is obvious from his evidence that when the news was given to them it was too late to go to the cremation at night, that they contemplated that the cremation would be in the morning and that the friends of this witness all went to the morning cremation. Yet neither he nor his friends had any reason to believe apparently that there was an attempt at cremation on the evening of May the 8th. It seems to me clear that the witness must have been mistaken as to the time when the information was given to him.

MADHUSUDAN MUKHERJEE

As regards the evidence of Madhusudan Mukherjee I am of opinion that no reliance can be placed upon it. This witness deposed that he was living at Bhutia Busti Villa at Darjeeling at that time and that with him in the Villa were residing Anukul Chatterjee and others. The witness states that just a little after dusk he received the news that Ramendra Narayan Roy was dead and his friend Anukul Chatterjee went out at 7 or 7-30 P.M. Anukul returned sometime during the night, perhaps midnight, or in the early hours of the morning, drenched from head to foot. The suggestion is that Anukul had accompanied the evening cremation procession and had been caught in the rain. The witness had no conversation with Anukul Chatterjee after he returned.

In the first place, it seems to me extraordinary that anybody who had attended a cremation procession and had been driven away from the cremation by storm and rain and had returned to the cremation ground when the rain was over to find that the dead body was missing, should then return home and not take the trouble to narrate to his friends and relatives the details about this unusual and extraordinary occurrence. In the case of this witness we have another reason for not accepting his evidence. It appears that in July, 1921, shortly after the present plaintiff had appeared and claimed to be Ramendra Narayan Roy, a Sub-Deputy Magistrate came to the witness and questioned him about the events in Darjeeling. The witness admits that he was questioned and his statement was taken. Unfortunately, the actual statement given by the witness was not available. The defence produced what purported to be a copy of that statement. Naturally, the witness was not in a position to say whether that copy was, in fact, his statement or not. But the following question was put to him: "Did you say 'Probably before noon the procession started. I don't remember, but one of my friends Anukul Chatterjee since deceased who joined the procession came back to our house probably at dusk or just before dusk'?" Answer: "I don't remember. I am not prepared to deny it." It seems to me that if the recollection of the witness is correct, he must be in a position to say definitely whether in 1921 he gave to the Sub-Deputy Magistrate a story so completely at variance with the story now given. It seems to me that the witness is afraid of denying the original statement made before a Sub-Deputy Magistrate. After careful consideration of the whole of his evidence it seems to me that this witness is not a witness of truth. These are the only witnesses upon whose evidence the learned trial judge has relied for this part of his finding.

ABSENCE OF PRESCRIPTION FROM DUSK TO MIDNIGHT

In dealing generally with the question of death at dusk the learned trial judge has referred more than once to the fact that no prescription appears to have been made by the doctors between the hours of dusk and 11-45 P.M., and he seems to have argued that because there was no prescription, the patient must have been apparently dead. I must confess that I am unable to understand this line of argument. It is perfectly clear from the evidence on record what were the symptoms and what was the condition of Ramendra Narayan Roy in the half a dozen hours preceding his death. A number of medical witnesses have been examined by both parties in this case. It has not been suggested by a single doctor, so far as I am aware, that any medicine should have been prescribed to deal with those symptoms which was not in fact prescribed. It has not been suggested that any prescription other than those made might reasonably have been made to meet with the conditions which the doctors had to face. The fact, therefore, that no new prescriptions were made after dusk does not indicate that the patient must have been dead. All the materials which the doctors required in dealing with the case were already at their disposal.

ALLEGED EVENING CREMATION

We are led, therefore, to consider the evidence regarding the alleged evening cremation. The case made out on behalf of the plaintiff is to this effect: Ramendra Narayan Roy was taken for dead at about 7 P.M. At once people were sent to the shops to procure materials necessary for cremation. These materials, fuel, ghee, sandal wood etc., were sent to the new cremation ground. Thereafter, messages were sent to the Lewis Jubilee Sanitarium, to

the old Cutchery Building, to Bhutia Busti Villa and to other places where Bengalee gentlemen were residing in Darjeeling, calling for assistance in carrying the body to the cremation ground. At the same time information was sent to Mahendra Nath Banerjee, the Government Pleader of Darjeeling, and as a result, his wife Kasiswari Devi went to "Step Aside" at 8 or 9 P.M. to comfort Bibhabati.

PLAINTIFF'S VERSION

At about 9 P.M. Bibhabati, according to the plaintiff's version, was allowed a last look at her husband's body and the body was then carried off in procession to the cremation ground. We are not concerned at present with the route taken from "Step Aside" to the Cart Road. But from the Cart Road the way lies down Ferndale Road, Conservancy Road, then Victoria Road and at last the old Sudhir Kumari Road down to the old cremation ground. Judging from the map of Darjeeling which has been made an exhibit in the case, Z(350), the old cremation ground is situated about five hundred feet below the level of Cart Road. The old Sudhir Kumari Road was a narrow difficult road with no buildings on either side at that time, and the old cremation ground was merely a small level area on the steep hillside, far distant from any residence. In the year 1907 a new cremation ground had been opened which was situated still further down. The approach at that time was by the old Sudhir Kumari Road, passing the old cremation ground and thence by a narrow path to a place about two hundred yards distant from the old cremation ground and about fifty feet lower down the hill. At the new cremation ground there was a building and an appropriate structure on which a funeral pyre could be built. The old cremation ground had been officially abandoned, but it is not clear that people had ceased completely to use it by the year 1909. On either side of the pathway between the old and the new cremation grounds was situated the vegetable garden of Mr. Morgenstern, and his house and some of the buildings were situated at some distance above the old cremation ground. It is not clear from the evidence of the plaintiff's witnesses whether a little rain had begun to fall before the party reached the cremation ground or whether it was still fine up to that stage. The case is that the party halted at the old cremation ground and commenced to look for a site where they could take the dead body. The body had been placed upon a *khat* covered with a sheet, and the sheet had been tied to the *khat* to prevent the body slipping as the party came down the hill. The *khat* with the body still on it and the sheet still tied, was placed on the ground, while the funeral party decided on the exact site of the funeral pyre. At this critical moment the storm burst and rain came down in torrents. All the members of the party fled and took shelter in distant places. The storm continued for some considerable time, and not until the sky had cleared and the rain had ceased did the funeral party return to the cremation ground. They then discovered that the sheet had been untied and the body removed from the *khat* and taken away. They immediately searched in all directions for the body but without success. The party finally gave up the search and started back towards "Step Aside".

It is the plaintiff's case that between the time of the abandonment of the search, and 5 or 6 o'clock in the morning some other body was procured by Satyendranath Banerjee and his companions, and this other dead body was carried back to "Step Aside" and kept there in a room downstairs until morning, and this dead body was carried in procession in the day time of May the 9th, was taken to the new cremation ground and there burnt to ashes.

STORY HOW FAR PROBABLE

Before discussing the evidence offered in proof of the evening cremation it seems to me desirable that the story itself be examined with a view to decide how far it can be regarded as a reasonable and probable story. It should be remembered that the new cremation ground had been in use since 1907, that is to say, for two years from before this incident. The old one had been officially abandoned, but there is evidence to show that it had been used on occasions after 1907 and possibly up to 1909. There was a shed at the new cremation ground, but there was no shed at the old cremation ground. According to the evidence on record, the funeral requisites—fuel, ghee, etc,—had been sent to the new cremation ground and not to the old one. The shed at the new ground was nearer to the old ground than any other place in which shelter from the rain could be had. It has been argued on behalf of the plaintiff that the road between the two cremation grounds had not been made and was virtually impassable. There is evidence to show that a hill stream or jhora ran between the two grounds, and there is some evidence on the side of the plaintiff to show that in going from one cremation ground to the other one had to get down into this jhora. It has been argued before us that this pathway was perfectly impassable at night. At the time when we visited Darjeeling there was nothing to indicate that the jhora constituted an obstruction and there was then no difficulty in passing from the old cremation ground to the new one. It may easily be that the road was not in as good a condition in 1909 as it was when we visited. But the fact remains that the new cremation ground had been in regular use since 1907. The only approach to the new cremation ground was by the road past the old cremation ground. The new cremation ground was in fact used for the morning cremation on May the 9th, 1909, and there is evidence of one witness for the plaintiff that a rickshaw was taken to the new cremation ground on the morning of May the 9th. From these circumstances it is obvious that the road to the new cremation ground, though possibly difficult, was by no means impassable even at night. It might be reasonably argued that a cremation party taking a dead body at night would have stopped at the first convenient place and carried out the task of burning the body, particularly if the night was fine and the requisites for cremation were available at that spot. It is, however, difficult to understand how such a party could choose the old cremation ground with its lack of shelter and lack of ordinary facilities when the weather was threatening, if indeed rain had not actually fallen. It is all the more extraordinary when it is remembered that the funeral requisites had been sent (according to the evidence) to the new cremation ground. The funeral party consisted, to some extent, of residents of Darjeeling who were familiar with the two cremation grounds and who knew the way to both. It is obvious that if the party arrived at the old cremation ground and found none of the materials for cremation at hand, the question would at once arise whether these materials had been sent to the new ground and somebody would be sent to that ground undoubtedly. If that had been done, it is surely obvious that the party would have then continued their way to the new ground and carried out the cremation at that place. In the circumstances it is difficult to understand why the cremation party should have halted at the old cremation ground as alleged and spent some time there looking round for a convenient site on which to burn the body without any materials for the burning. It might of course be argued that this was merely foolishness on their part, and that when people are faced with sudden emergency they do often behave foolishly, and, therefore, this conduct though foolish is not so impossible as to discredit their story.

PROCURING OF ANOTHER DEAD BODY

But there are much greater difficulties in the way of acceptance of the plaintiff's account of this night's happenings. The latter part of the story is much less easy of acceptance than the earlier part. An essential part of this story is that after the funeral party discovered that the dead body was missing and could not be found on search, they set out to produce from some unknown place another dead body and carried it all the way up the hill back to "Step Aside" and placed it in a downstairs room in that house in order that it might be taken out again in procession on the following day. The only motive suggested for this extraordinary conduct is that the persons who had taken out the body on the night of May the 8th and who had to abandon the body of Ramendra Narayan Roy became so apprehensive that they would be censured for their conduct on their return to Jaidebpur that they decided to do something to avoid scandal and to avoid rebuke. Even if it be granted that such a motive was likely to influence the persons who took part in this occurrence, the alleged conduct seems to me the least satisfactory way of achieving their end. They might easily have returned to "Step Aside" and simply stated that they had burnt the body, though they had not done anything of the sort. If it can possibly be argued that the people of Jaidebpur would not hear any gossip from Darjeeling or would not hear of the rumours current in Darjeeling, such a story was likely to obtain credence in Jaidebpur. On the other hand, if the people in Jaidebpur were likely to hear the rumours current in Darjeeling, no possible conduct on the part of the funeral party could serve to prevent the people in Jaidebpur learning about an abortive attempt at cremation and the abandonment of the dead body. A second method by which they might attempt to avoid criticism and censure was to burn the empty *khat* and to report that they had in fact burnt the body. It is interesting to note that the story was actually put forward at one time in a pamphlet published by the supporters of the plaintiff in June, 1921. The pamphlet is entitled "Bhowler Katha O Nabin Sannyasi", and in it we find the statement, "When the rain and storm ceased they on coming back to the cremation ground could not find the dead body of the Kumar any more. Thereafter it is said they went away setting the empty pyre on fire." If, however, these people felt that the burning of an empty *khat* was not sufficient and that it was essential to burn a body, if a body was available, it is difficult to understand why they should not take the body to the cremation ground that night and burn it at once. No useful purpose was served by taking the body back to "Step Aside." By taking the body back to "Step Aside" they were advertising the fact that the first attempt at cremation was unsuccessful. They were running the risk of discovery, because it may be safely assumed that the people who did not leave "Step Aside", were not parties at that stage to any proposal to substitute another dead body for that of the missing Ramendra Narayan Roy. It has been admitted by the plaintiff's party and it has been proved by evidence which cannot be questioned, that Bibhabati was certainly not a party to any misconduct at that particular time. It is admitted further that she had displayed all the ordinary signs of grief. It is obvious that if a body was taken back to "Step Aside", some explanation for this extraordinary conduct would have to be offered to her, and the risk would have to be run of her insisting upon seeing again the dead body of her husband. Apart from Bibhabati, the other members of the household at "Step Aside" might quite easily have desired to look again on the face of their dead master. Such being the case, the risks in taking the dead body back to "Step Aside" were

enormous and no useful purpose would be served thereby. It is conceded that there is strong superstition in this country against taking a body back into the house from which it has once been taken out for the purpose of cremation. It seems to me, therefore, that the motive for taking a substituted dead body back to "Step Aside" is most unconvincing.

ALMOST AN IMPOSSIBILITY

Furthermore, it is to be considered what opportunity these persons had to decide on such a scheme. The earliest hour at which the dead body of Ramendra Narayan Roy could have been taken out from "Step Aside" for cremation on the night of the 8th May was 9 P.M. It is the definite case of the plaintiff's party that Bibhabati was allowed a last look at her husband's dead body at about 9 P.M. on that night. The way from "Step Aside" to the cremation ground was long and difficult. It would have taken at least an hour and probably much longer. The party could not possibly have reached the cremation ground before 10 or 10-30 P.M. at the earliest. Some time must have elapsed at the cremation ground before they fled. The evidence with regard to this incident and with regard to the rescue indicates that the storm which dispersed the funeral party lasted for some considerable time. The evidence further shows that these people took shelter at some considerable distance from the cremation ground. It is obvious, therefore, that the funeral party could not have returned to the cremation ground after the storm was over much before midnight. Then drenched and miserable, these unfortunate people searched on the hillside for the missing body. It is obvious that if they were so horrified at their own conduct in abandoning the dead body that they were prepared to contemplate such a serious crime as to procure a dead body of some other person or to disinter a body from some grave, they would not abandon the search for Ramendra Narayan Roy's body until they had done their best to discover it. Such being the case, it must have been 1 A.M. or later before there could be any occasion for them to consider what they were to do in view of the fact that their search for the body was unavailing. What could have induced these persons at that hour of the night to imagine that they could get another dead body to substitute in the place of the one they had lost? They were strangers in the locality, and there is no reason to suppose that they knew where the burial ground was situated. Dead bodies do not lie about in public places and are not ordinarily available on demand. How could these people imagine at that hour of the night that they could at once procure another dead body? and whence could the dead body be obtained? If the dead body was one which was still in the house of his relatives, it could not be imagined that the relatives would abandon the body or allow it to be taken without opposition. If they took a body under such circumstances, the fact would immediately be made known and the object of taking it would be defeated. Is it conceivable that these persons would know where the graveyard was to be found? or that they could defile themselves by handling a corpse which they had disinterred from a grave merely for the purpose of avoiding censure and rebuke on their return to Jaidebpur? It seems to me that the whole story bristles with improbabilities, and the story is so nearly impossible that it could not be believed except on absolutely unimpeachable evidence.

ALLEGED RAIN AND STORM

It is obvious from the plaintiff's account that one of the most important questions in this case is whether or not there was any rain at the cremation ground on the night of May the 8th. It happens that Darjeeling is rather unusually well provided with centres at which there are rain gauges, and at which records are kept. At St Paul's School which is situated about three quarters of a mile to the south east of the old cremation ground, there was a rain gauge from which the figures for the Government records were taken. At St Josephs' College which is situated about $1\frac{1}{2}$ miles to the north of the old cremation ground was another rain gauge which was read by one of the Fathers in that College who was a student of Meteorology and who kept records of the rainfall. In addition, records were kept at the Municipal Office which is about half a mile distant from the cremation ground in a direction to the north and east therefrom. A fourth record was kept at the Lloyd Botanical Gardens which was in a north-easterly direction from the old cremation ground. It happens also that Dr B B Sarkar whose diary has been proved in this case made a note each day in the diary regarding the weather. Dr B B Sarkar lived in a house on Cart Road almost due east of the cremation ground.

GOVERNMENT WEATHER REPORTS

The materials available from all these sources do show what was the weather at Darjeeling on May the 8th and the days before and after. At that time Darjeeling was included in Bihar for the purpose of the Government weather report. As appears from *Ex Z(329)*, the Government weather report for the 24 hours ending 8 A.M. on Saturday May the 8th shows that in "*Bengal*—Practically there is no cloud. Mean temperature is in excess and the humidity—rather variable. *Bihar*—The sky is practically free from cloud. Day temperatures are in large excess (Bhagalpur maximum 110 degrees). The air is much drier than usual at most stations", and under the head *General* appears the phrase, "There has been practically no rain except in Assam, where further local falls may occur before to-morrow". The record shows that at Darjeeling the rainfall was nil, the barometer was rising and the temperature was 6.3° in excess of normal for that day.

On the following day, that is, for the 24 hours ending 8 A.M. on the 9th of May, the Government record shows "*Bengal*—The sky is clear. Mean temperature is in excess and the humidity is lower than usual. *Bihar*—The sky is free from cloud. Day temperatures are in considerable excess, although the night temperature at most stations is below normal. The air is very dry." Under the head *General* appears the remark, "Local rain fell in Assam yesterday. Elsewhere the sky is clear or slightly-clouded and the west winds in Bihar are responsible for very dry weather over that division". The figures for Darjeeling show that rainfall was nil, the barometer was still rising, the temperature was still rising, the temperature was 7.2° in excess of normal, and there was a rise in maximum temperature—compared with the previous day by one degree.

For the 24 hours ending 8 A.M. on Monday, the 10th of May, the record shows "*Bengal*—Clear or lightly clouded skies are reported. Mean temperature is in excess by 4 to 8 degrees. The air is drier than usual. *Bihar*—The sky is clear except towards the east where it is moderately clouded. Dry temperatures are in large excess. The air at most stations contains less moisture than

usual," and under the head *General* there is the remark, "Assam reports rain at several stations. More may possibly be there before to-morrow. Conditions similar to yesterday are likely to hold over the two Provinces, and the humidity, already below normal, may decrease still further." The figures for Darjeeling show that the rainfall was nil, the barometer was still rising and the maximum temperature was 56 degrees in excess of normal, the maximum day temperature was 5 degrees less than the maximum recorded on the previous day.

For the 24 hours ending 8 A.M. on Tuesday, the 11th of May, the record shows "*Bengal*—Clear or slightly clouded sky is reported. Both day and night temperatures are in excess and the humidity is rather variable. *Bihar*—The sky is clear except at Darjeeling where it is overcast. Mean temperature is in excess and the air is much drier than usual towards the west." Under the head *General* appears the remark, "Rain was fairly general in Assam yesterday and more is possible to-day. Rain is also not unlikely in Eastern Bengal and on the Orissa coast." The figures for Darjeeling show that the rainfall was nil, the barometer had fallen slightly, the maximum temperature was still 35 degrees in excess of normal but 2 degrees lower than that recorded on the previous day.

ST JOSEPHS' AND ST PAUL'S REGISTERS

The St Josephs' Register is *Ex Z(148)*. The method of maintaining the register at St Josephs' was different from that observed at St Paul's. The same period, namely, 8 A.M. to 8 A.M. was chosen for the purpose of keeping a record, but the record under the head of any particular date at St Josephs' represents rainfall from 8 A.M. on that particular day to 8 A.M. on the following day, whereas the record at St Paul's under a particular date refers to the rain from 8 A.M. of the previous day to 8 A.M. on the day on which it is recorded, that is to say, if we take May the 8th, as an example, if any rain is shown in the St Josephs' record under the date May the 8th, that rain will have fallen between 8 A.M. on May the 8th and 8 A.M. on May the 9th, whereas if rain is shown in the St Pauls' record under date May the 8th, that rain must have fallen between 8 A.M. of May the 7th and 8 A.M. of May the 8th. If this difference in the method of recording the readings is borne in mind, the apparent differences between the records can easily be explained. The St Josephs' record is *Ex Z(148)*. That record shows rain under date May the 1st, May the 2nd and May the 3rd, no rain under dates May the 4th, 5th, 6th, 7th, 8th, 9th, 10th and 11th, and then rain on May the 12th and successive days. The maximum temperature at St Josephs' increased steadily from May the 1st up to May the 8th, and then fell steadily until May the 15th.

MUNICIPAL RECORD TAMPERED

The Municipal records unfortunately have no value for us in this suit. The defendants obtained a certified copy of the Municipal record, and that certified copy showed rain on May the 1st, 2nd and 3rd, no rain between May the 4th and May the 12th, and then rain again on May the 13th and subsequent days. After the defendants had obtained their copy, the plaintiff applied for and obtained a certified copy of the same register. When their copy was prepared, it was discovered that the entry after May the 3rd had been tampered with, that the figure representing the date had been scratched

out, and had then been overwritten, that a line had been struck through it and the figure 13 had been written over it. The plaintiff contended that the original figure was some figure other than 13, and that this register was tampered with by somebody on behalf of the defendants who had attempted to make the original figure look like 13, and having failed, had crossed out the entry and written "13" above it. The defendants, on the other hand, contend that the original figure was 13, and that somebody on behalf of the plaintiff tampered with the record and tried to erase the figure 13 and substitute the figure 8 in its place. When he failed to do so in such a manner that suspicion could possibly be averted, he crossed it out and wrote 13 on the top in order to convey the impression that the record had been tampered with by somebody on behalf of the defendants. Arguments have been placed before us by both the learned counsel, each suggesting that the record must have been tampered with by somebody on behalf of the other party. There are arguments in support of both the versions, but it seems to me impossible to say with any certainty what the original entry was or at whose instance the record was tampered with. This record, therefore, must be ignored, and no inference can be drawn from it.

BOTANICAL GARDENS REGISTER

The Botanical Gardens register is *Ex Z(207)*. The register shows that there was rain on May the 1st, 2nd, 3rd and 4th, no rain from May the 5th to May the 13th, and rain on May the 13th and subsequent days. The learned counsel for the plaintiff has argued that no reliance should be placed on the Botanical Gardens register in view of the evidence as to the manner in which that register was kept.

The register was produced by Bahadur Singh, a Chaprasi of the Botanical Gardens. Summonses had been served upon the officer in charge of the Gardens to produce the document, and he had sent the same through Bahadur Singh to the court. Bahadur Singh deposed that readings were sometimes taken in a slip by the Sahib, if he happened to be absent from the Gardens. He would subsequently enter the figures on the slip in the book. The evidence of this witness and the record shows that the Botanical Gardens record was rather carelessly kept and it cannot be held to be conclusive. But it is, at all events, significant that this record shows no indication of any rain on May the 8th or 9th, and however carelessly the record was kept, it was kept at a time when no dispute had arisen regarding this particular period.

DR B B SARKAR'S DIARY

In the diary of Dr B B Sarkar, *Ex Z(215)*, we find that for May the 8th and May the 9th he noted that the weather was bright. On May the 10th there was slight drizzling.

The entries in the records, therefore, show that there was no rain at any of these various places in Darjeeling on May the 8th or May the 9th. We have still another record which is relevant for the purpose of the present enquiry, and that is the extract from the supplement to the Calcutta Gazette which is *Ex Z(246)*. It shows no rain at Siliguri between May the 6th and May the 12th, no rain at Darjeeling between May the 5th and May the 12th, no rain at Kalimpong between May the 5th and May the 10th, no rain at

Mongpoo between May the 5th and May the 13th, no rain at Kurseong between May the 6th and May the 12th, and no rain at Pedong on May the 8th, 9th and 10th. In other words, according to this record in a number of stations clustering round Darjeeling no rain was recorded on May the 8th, 9th and 10th.

All these records show a steadily rising barometer, and a wind from the north, east or north-east.

FATHER PEEL'S EVIDENCE

The defendants examined Father Peel, one of the masters of St Josephs' College, who was a student of meteorology and who had studied meteorological conditions in Darjeeling for many years past. Father Peel deposed that the meteorological records of that period indicated that the monsoon had not set in at Darjeeling and that pre-monsoon conditions were then prevailing. He said that his experience based on observations from 1916 onwards was that when rain occurs in Darjeeling during the prevalence of pre-monsoon conditions, that rain will certainly be recorded either at St Josephs' or at St Paul's. There may be rain at St Josephs' and not at St Paul's, there may be rain at St Paul's and not at St Josephs', but if no rain is recorded at either place, it is almost certain, according to this witness, that no rain fell in Darjeeling during that period. The witness has further stated that in consideration of the details given in the Meteorological Chart and in view of the figures to which I have referred above, it is clear that there was a spell of dry weather between May the 7th and May the 9th, and that no rain fell at Darjeeling. We have been asked to reject the evidence of this witness on the ground that weather prediction is notoriously uncertain. This argument omits to notice that Father Peel's evidence was not wholly weather prediction. He gave his opinion as to the conditions that prevailed from a consideration of the recorded figures and the Government Chart both before and after the date in question. In other words, he interpreted the data which the Meteorological authorities were in a position to provide. It is one thing to predict from present conditions what the future is likely to be, but it is a totally different thing to state from a consideration of the conditions all round a particular place before, during and after a specified time what must have happened at that particular place at the specified time. It seems to me unreasonable to reject Father Peel's evidence in toto. It seems to me that his evidence taken with the materials derived from the records at St Josephs' and St Paul's and confirmed by the Botanical Gardens record and by Dr Sarkar's diary indicates that there was probably no rain at Darjeeling on May the 8th, and there was certainly not a heavy storm which spread all over Darjeeling, and reached Lebong, as some of the witnesses say.

In support of his conclusion that there might easily be rain at the old cremation ground in spite of the fact that all the records available show that there was no rain in Darjeeling at that time, the learned trial judge has referred to the evidence of witnesses like Dr MacGilchrist, Dr Calvert and Mr Rankin to show that it is a common occurrence for rain to fall at one place in Darjeeling at a time when it is fine at another place. Such a phenomenon is not uncommon in other places also. But we are not now concerned with the simple question as to whether rain had fallen at one moment at one place, while it was fine in another. It often happens that a storm passes over one spot before it reaches another spot. The problem before us is not whether rain might have fallen at one place when it was fine in neighbouring places. The problem is whether it was possible that a

violent storm could come up the valley from the west or the south-west and deposit rain with such violence at the cremation ground as to drive away the funeral party in utter confusion, and yet that not a drop of rain and not a trace of storm should reach any point 500 yards beyond that cremation ground. The places for which we have records showing complete absence of rain are St Josephs' to the north, the Botanical Gardens to the north-east, Dr Sarkar to the east and St Paul's School to the south-east. In other words, a line of observation posts shows that no rain reached a spot half a mile beyond the east of the cremation ground. It seems to me incredible that a storm so violent as is described by the plaintiff's witnesses should come to a sudden termination before it proceeded half a mile beyond the cremation ground.

The learned judge in his judgment has a remarkable passage at page 376 of the paper book. He says, "I find, however, as much as 2.41 inches of rain on the 5th, 4.98 inches on the 6th, 5.77 inches on the 7th, 3.36 inches on the 8th, 1.17 inches on the 9th May, 0.21 on the 10th, 0.79 on the 11th, 2.10 on the 12th May in Jalpaiguri District which is at the foot of the Himalayas, and must include the valleys near Darjeeling, and certainly Siliguri. It looks *kalbaisakhi* (Baisakh rainstorm) indeed with wind towards the North." I have not been able to discover from what source the learned trial judge obtained these figures. It may be that the figures have been obtained from some Gazette. But even if that is so, the argument is fallacious. The learned trial judge seems to have overlooked the fact that in a Gazette if rainfall is recorded at Jalpaiguri, it does not mean that the rain has fallen in equal amount over the whole of Jalpaiguri District. Jalpaiguri town, where I presume the rain gauge was, was situated at a considerable distance from Darjeeling, and rain at Jalpaiguri town does not indicate rain all over Jalpaiguri District and certainly does not indicate rain at Siliguri or any place near Darjeeling. As I have pointed out above, the Gazette records show that there was no rain at Siliguri between May the 6th and May the 12th. The deduction, therefore, made by the learned judge from the figures for Jalpaiguri that there must have been rain at Siliguri and possibly also in the foothills near Darjeeling is contrary to the evidence and is wholly unjustified.

FAKIR ROY'S EVIDENCE

The learned trial judge relied upon one other piece of evidence in arriving at this conclusion. The evidence referred to is the evidence of a witness named Fakir Roy. Fakir Roy is a witness who was examined by the defendants on commission in October, 1932. This witness had been cited as a witness for the plaintiff, and one of the witnesses for the plaintiff had stated that this witness had taken part in the evening cremation procession. Thereupon the defendants had questioned the witness and obtained from him a statement showing clearly that he had not taken part in the evening cremation. They, accordingly, summoned this witness in order to prove that he had not done so. They examined him, and he deposed in favour of the defendants and stated definitely that he had never gone to the cremation ground for burning the dead body of the second Kumar of Bhowal. In cross-examination this witness was asked "Do you remember your having had any talk with Anukul Chatterjee about the Kumar of Bhowal before your seeing the procession of which you spoke? (Objected to)" Answer — "Whether it was before or after—that I do not remember, but that Anukul Babu told me that he went to burn the Kumar the night before. For that

reason he felt pain in hands and feet and all over his body I think Anukul Babu told me thus" Again, he stated "There were rain and storm at Darjeeling in the evening just preceding the day on which the procession, of which I spoke, was held" Question "Whether there were storm and rain at night? (Objected to)" Answer "Methinks, there were rain and storm from dusk till 9 P M at night" Then says, "I think it was just like the *Kal Baisakhi* (rain and storm occurring in the month of Baisakh), in our part of the country" The witness was re-examined by the defendants' advocate The re-examination was in fact cross-examination designed to show that the witness was an untruthful witness In his re-examination he gave the following evidence "Did Anukul Babu say that the body of the Kumar was burnt after it had been taken to the cremation ground? (Objected to)" "He said that he went to cremate the dead body, but he did not tell whether he did cremate it or not" "Did he tell you anything of the sort that the body was left on account of rains and storm? (Objected to)" "No, he did not say anything of the sort" "Did he tell anything of the sort that the dead body could not be burnt? (Objected to)" "No, I did not hear anything of the sort" "Did Anukul Babu tell you anything about the exact time when he started with the dead body from the "Step Aside"? (Objected to)" "I do not remember" "You said that a Deputy Magistrate took down your statement, and you stated further that you enquired of the Deputy Magistrate why he took down your statement What did you come to know?" "Taking down my statement, he said that if my evidence was required, I would have to give it" "Did you tell the Deputy Magistrate about your interview and talk with Kasiswari Devi which you stated in your deposition before the Commissioner? (Objected to)" "Yes, I did" "You spoke of *Kal Baisakhi* in your cross-examination In which month or months does the *Kal Baisakhi* take place?" "From the end of March to the 1st week of May" "When there is rain and storm of *Kal Baisakhi*, does it take place all over Darjeeling? (Objected to)" "Yes, it takes place all over Darjeeling" "Because the death of the Kumar took place during the *Kal Baisakhi* time, you said that there was rain and storm from the evening till 9 o'clock at night on the night preceding the day of the procession, or after such a long time you clearly remember that rains and storm did actually take place on the night preceding the day of the procession? (Objected to)" "I have no recollection Because it was the season of *Kal Baisakhi*, you said that there might have been rains and storm on the night preceding the day of the procession? (Objected to)" "Yes, it was because it was the season of *Kal Baisakhi*" It is obvious from the evidence of this witness that he had no clear recollection whether there was rain on the night of May the 8th or not The re-examination may be open to criticism But it does, in my opinion, shew that the witness is utterly unreliable and untruthful If this is an untruthful witness, as seems to be the case, it should be remembered that he was first approached by the plaintiff's men, and his statement in cross-examination is as likely to be the result of suggestions from them as his statement in re-examination is likely to be the result of suggestions from the defence counsel It seems to me that the evidence of this witness is certainly not so convincing and so reliable as to justify the court in drawing an inference contrary to the inference suggested by all the contemporaneous independent evidence

CONCLUSION NO HEAVY RAIN AND STORM

In my opinion, it cannot be stated with certainty that not even a shower fell on the cremation ground, but it can be said with fair certainty that

there was no such heavy storm at Darjeeling on that night as would drive the funeral party away and compel them to abandon the body

It should be remembered in this connection that the old cremation ground was at a considerable distance from any human habitation. The members of the household of Ramendra Narayan Roy were strangers to Darjeeling. They could not know the neighbourhood in which the cremation ground was situated. They went there at night, according to the plaintiff's case, when the sky was overcast, if it was not actually raining. They went down a deserted hillside at dead of night, along a difficult path where there was no sign of habitation near about. There was no question, therefore, of their withdrawing a few yards from the cremation ground to take shelter while the storm passed. If they fled, it meant they fled to a considerable distance leaving the body. It seems to me extremely unlikely that anything short of a very violent storm could compel them to behave in this way. This evidence regarding rainfall at Darjeeling is a strong indication, therefore, that the plaintiff's story of the evening cremation cannot possibly be true.

ORAL EVIDENCE ON PLAINTIFF'S SIDE

The plaintiff examined 28 witnesses in all to prove that the evening procession actually took place. The evidence of these witnesses has been examined with great care and has been criticised by the learned advocate for the defendants on many grounds. It is obvious that when witnesses depose after such a lapse of time as in this case, discrepancies in details and as regards the actual time at which the incidents occurred have no particular meaning. The witnesses had no reason to remember the incident for 10 or 12 years after it occurred. It was not until the plaintiff arrived in Dacca in 1921 and there was considerable excitement regarding his claim to be Ramendra Narayan Roy that the witnesses to the incidents in Darjeeling had any occasion to think of those incidents and to decide exactly what happened. In the circumstances, even the grossest contradictions in detail would not be sufficient to discredit the witnesses.

HOW TO TEST SUCH EVIDENCE

On the other hand, it is not possible to check the evidence of witnesses by ascertaining to what extent they agreed with each other. There can be no doubt that in this case false witnesses have been procured and false evidence has been given on one side or the other, if not on both sides. The only way in which we can check the evidence of these witnesses is to consider whether they are the persons who would be likely to take part in such a funeral procession, whether their alleged conduct at the time is natural or probable conduct, whether their alleged subsequent conduct is reasonable and natural conduct, and whether the manner in which their evidence has been obtained is straightforward and above board.

BELATED DISCOVERY OF THE WITNESSES

When the plaintiff presented his memorial to the Board of Revenue in December, 1926, he stated that Mr Dwarka Nath Chakravarty had been

pleased to hold an enquiry into the matter extending over two years, and Mr Dwarka Nath Chakravarty had examined the gentlemen marked with asterisks in the following list and many others including persons who were with the Kumar at Darjeeling and who attended the funeral. We have also a definite statement in a letter written over the signature of Ram Satyabhama Devi to J G Drummond, Collector of Dacca, on the 29th of July, 1922 to the effect that "Babu Surendra Nath Mukherjee, B L, an educated and a respectable gentleman of Dacca, had gone to Darjeeling and made enquiries about the alleged cremation." It is clear, therefore, that in 1921 or 1922 enquiries had been made at Darjeeling, and if the statements in this document are to be believed, evidence had been procured regarding the alleged cremation of Ramendra Narayan Roy. We have every right to expect, therefore, that the witnesses examined on those occasions should be produced before us and their evidence offered to us for our assistance. We find, however, that with one or two notable exceptions, all the witnesses examined on behalf of the plaintiff in the present case to prove his story of the evening cremation have been procured within a month or two before their evidence was recorded, with the exception of one or two, the remaining witnesses were not discovered by Mr Surendra Nath Mukherjee, nor was their evidence placed before Mr Dwarka Nath Chakravarty before 1926.

OTHER FEATURES OF THE EVIDENCE

Another striking feature of the evidence is that none of the witnesses assert that any of the friends and relatives of Satyendranath Banerjee or any other member of the Darjeeling party attended the evening cremation. It is an admitted fact that Shyamadas Banerjee is a close relative of Satyendra Nath Banerjee, brother-in-law of Ramendra Narayan Roy, and that Shyamadas Banerjee was residing at the time in the old Cutchery Building at Darjeeling. It is admitted that Rajendra Nath Sett was a great friend of Satyendranath Banerjee and was residing at the time in the Lewis Jubilee Sanitarium. It is admitted that these two gentlemen received a call to assist at the cremation and that they went to the morning cremation. It is not even suggested that they went to any cremation procession on the evening of May the 8th. Again, it is admitted that the sons of M N Banerjee, Government Pleader of Darjeeling, were boys who were accustomed to assist strangers in difficulties and who frequently assisted on such occasions as cremations. It is admitted that Kasiswari Devi, the wife of M N Banerjee, was a lady who was always ready to help any Bengalee who was in difficulty at Darjeeling. Her generosity and sympathy was so well known that it has been conceded in this case that she would certainly have gone to the assistance of Bibhabati as soon as the news of the death of Ramendra Narayan Roy reached her ears. It is, therefore, almost certain that the sons of M N Banerjee would have rendered assistance at the cremation of Ramendra Narayan Roy, if they were free to do so. There is evidence on the side of the defendants that one at least of these sons assisted at the morning cremation. This evidence has been questioned and contradicted by other witnesses examined on behalf of the plaintiff, but nobody so far as I am aware has suggested that these sons of M N Banerjee rendered any assistance on the occasion of the evening cremation.

One of the striking features in the evidence in this case is that nobody asserts that the people who would naturally have assisted on the occasion of the cremation of Ramendra Narayan Roy Chowdhury took part in the

evening procession Furthermore, with the exception of two or three witnesses, those who deposed that they attended the evening procession were not personally invited to do so They were people who joined the procession either out of curiosity or sympathy without any personal interest in the matter Mr Chatterjee on behalf of the plaintiff has argued that the people of Eastern Bengal have such a passion for cremations that they are eager to join any cremation procession that they may see, whether the persons whose body is to be cremated is known to them or not It seems to me that if there were any truth whatever in this assertion, it would still be difficult to believe that such enthusiasm would not be chilled on a cold Darjeeling night at 10 P M when rain was either threatening or already falling, and the cremation ground was situated at a considerable distance along a difficult road

The learned trial judge has not discussed in any detail the evidence of the witnesses who deposed to the evening cremation Beyond stating that two of the witnesses are persons of repute upon whom reliance could be placed, he contents himself with giving a list of the other witnesses who deposed to the procession, and remarks "I do not propose to go through the evidence in detail They would not be believed if death at dusk was not a fact, and if that was a fact, there would be no reason to disbelieve them" I propose to refer briefly to the evidence of these witnesses, and it will be apparent from that reference that the learned trial judge's reluctance to place any reliance on their statements was perfectly justified

PADMINI MOHAN NEOGY

The witness on whom the learned judge chiefly relies is one Padmini Mohan Neogy This gentleman was a sub-editor of the "Bengalee" who was on leave at Darjeeling and was staying at Lewis Jubilee Sanitarium He deposed that one day at dusk a man came and said that the Kumar of Bhowal was dead and that men were wanted to help in the cremation He stated that he was one of 7 or 8 who thereafter went to "Step Aside" with him to assist It is interesting to note that nobody else from the Sanitarium has been examined as a witness, and none of those 7 or 8 who went from the Sanitarium has been named The witness proceeded to state that when he reached "Step Aside", he found the dead body on a *charpoi* downstairs Immediately after their arrival the procession started with the body to the cremation ground The witness himself left the cremation ground as soon as the party had arrived there with the body, apparently because the weather was threatening He returned to the Sanitarium and no rain fell during his return journey He stated that the rain came a little after "we reached the Sanitarium, how long after I cannot say"

"Q—Give us an idea

A—Within an hour

Q—Would you try to be more approximate?

A—I remember the rain commenced before I went to bed "

If this witness's evidence is to be believed, the party taking the body to the cremation ground arrived there at night, half an hour or an hour at least before there was any rain In other words, they had time to make the pyre, place the body thereon and set fire to it It is obvious that people

would not waste time over such a melancholy business in the middle of the night, and it is obvious that they could not have wasted half an hour at the burning ghat without setting fire to the dead body. In other words, if the evidence of Padmini Mohan Neogy were accurate, fire would, in fact, have been set to the body before the rain came down. The reason this witness gives for attending the funeral at that hour of the night is also singularly unconvincing. The witness is a Kayastha by caste and he realised that Brahmins were necessary for carrying the dead body. He stated "I did not probably ask who the bier-bearers were. I was not a Brahmin, but still went as I understood that *bhadralogues* would do, as enough Brahmins might not be available, and also because I expected a grand feast, the deceased being a big man." This explanation is singularly unconvincing. Even had the witness thought that the services of non-Brahmins would be required if the number of Brahmins was insufficient, he must have realised long before the procession reached the cremation ground that the services of non-Brahmins would not, in fact, be required. Further, his statement that he went because he expected a grand feast seems to me merely ridiculous, in view of the further remark that he did not enquire whether any such feast was held. But the thing that convinces me above everything else that the story of this witness cannot be true is the fact that he did not hear at any stage thereafter that the body was not cremated. He deposed as follows: "I stayed on at Darjeeling for 10 or 12 days after the incident. I had no reason to believe during these days that the Kumar had not been cremated. Nor any reason to believe that he had not been dead. I did not come to know of any funeral procession the next morning of the second Kumar of Bhowal." I am unable to believe that a newspaper man living in a building in which there were people who resided and took part in the morning cremation would be unaware of such a strange incident as that deposed to by the witnesses to the evening cremation. If, in fact, the body had disappeared and the relatives had been compelled to have a second procession on the following morning, this fact would have been known to all the Bengalee gentlemen in Darjeeling and would not have escaped the knowledge of the sub-editor of a newspaper. I am satisfied that the evidence of this gentleman cannot be accepted.

OTHER WITNESSES OF PLAINTIFF

The other witnesses examined on behalf of the plaintiff, who deposed to the fact that they took part in the evening cremation procession are

Sitanta Kumar Bagchi,
Kiran Mustaphi,
Biseswar Mukherjee,
Jatindra Chandra Chakravarty,
Indra Shing Satri,
Chandra Singh,
Manmatha Nath Choudhury

In addition to these, six witnesses have deposed to the purchase of fuel for the purpose of cremation on the night of May the 8th. They are

Durgaprasad Baishy,
Laksmi Chand,
Mahammad Ashraf Alam,
Kedar Nath Pande,
Bhakatbir Roy,
Jangbir Sinha Karky

A number of other witnesses have deposed that they saw the evening procession but did not accompany it. They are :

Ranjit Singh,
Dhanjit,
Lal Chand Panwala,
Santa Bir Shing,
Bhangi Rauth,
Nasiruddin Ahammed,
Mahammad Abdül Suttar

Another group of witnesses have deposed that they heard of the evening procession, but they did not actually see the procession or join in it. They are

Surendra Chandra Roy Chowdhury,
Giris Chandra Ghose,
Aswin Kumar Sen,
Madhusudan Mukherjee
Jnanendra Nath Banerjee,
Sailendra Kumar Kusari,
Matlal Ganguly,
Sushila Sundari Devi,
Mohammad Ali Hossain.

Still another witness, Jadu Lal Mullick, heard of the death of Ramendra Narayan Roy on the night of May the 8th. He did not even hear of the funeral procession.

Throughout the judgment, particularly in dealing with the evidence of the witnesses examined on behalf of the plaintiff, the learned trial judge has referred to their standing in society and to their respectability as a ground for accepting the evidence of witnesses. Unfortunately, in this case the mere fact that a man is a person of position and of independent means is not a sufficient ground for accepting his evidence. Many persons who are of this description have been examined on both sides, and many of them must have given false evidence. The evidence of all witnesses, whatever their position, requires examination before it can be accepted as being either truthful or accurate. A typical example of the nature of the evidence given with regard to the evening cremation is the evidence of a group of witnesses who all happen to be related to each other. They are. Jatindra Chandra Chakravarty, Sailendra Kumar Kusari, Matlal Ganguly and Sushila Sundari Devi.

JATINDRA CHANDRA CHAKRAVARTY'S GROUP

Jatindra Chandra Chakravarty had two brothers Basanta Kumar Chakravarty and Bejoy Chandra Chakravarty. Their sister was Sushila Sundari Devi who is the mother of Sailendra Kumar Kusari.

Matlal Ganguly is a connection by marriage of Jatindra Chandra Chakravarty.

The story is that two persons came to the house of Raj Kumar Kusari with the news of the death of Ramendra Narayan Roy. Basanta Kumar Chakravarty and Bejoy Chandra Chakravarty were then living in that house. Jatindra Chandra Chakravarty and Basanta Kumar Chakravarty on receipt of

the news set out for "Step Aside" to assist in the cremation, and in fact, went with the cremation procession to the cremation ground. When the rain came they fled and took refuge in the slaughter house near at hand. When the rain subsided, they returned to the cremation ground and found that the body was missing. They then went home and told the other persons in the house what had happened. Sailendra Kumar Kusari saw them on their return and found they were soaked to the skin, and heard about their experiences at night. Matilal Ganguly deposed that he was informed of the death of Ramendra Narayan Roy at 7-30 or 8 o'clock that night, but that he did not go to assist in the cremation, because he was not in the habit of so doing. On the following day he heard what had happened.

It is curious that in the year 1921 the defendants during the course of their enquiry obtained statements from Bejoy Chandra Chakravarty, one of the brothers of Jatindra Chandra Chakravarty, and also from Matilal Ganguly. It is not disputed that Bejoy Chandra Chakravarty gave a statement, and the statement produced by the defendants as his statement shows, if true, that he was absolutely ignorant about any cremation at night. It is curious that he should now be the person who did not attend the cremation ceremony, and that his two brothers should have gone and left him in entire ignorance. Sailendra Kumar Kusari was then a boy of 12 or 13. It is strange that he should remember the occurrence as he now pretends to.

Matilal Ganguly was examined by Hiranlal Mukherjee, Deputy Magistrate, on the 3rd of July, 1921. He now states that he was ill, if not unconscious, at the time when he was examined, and that he does not remember what statement he made. But in spite of his lapse of memory, he still maintains that whatever he said to Hiranlal Mukherjee was truth. His statement to Hiranlal Mukherjee is as follows (*Ex Z 252*)

"I was in Darjeeling in May, 1919. I only heard of the death of the second Kumar of Bhowal. I did not know his name. I was not present at the death or with the funeral procession or at the cremation of the Kumar. While the Kumar was in Rockwood some years before, I went with other boys to collect subscription for our football club. We waited outside and saw a fat man sitting on a couch inside the room. One of the boys told us, he was the Kumar. I did not mark his features at all as I was very young. I cannot say when the funeral procession started, or when the cremation ended, or what cremation ground was used, or which route was followed by the procession. I cannot say whether there was any rain or storm during the procession or the cremation. I do not know when the cremation took place, or if there was any rain or storm on the previous night. I have no knowledge as to the persons who were present either at the death or with the funeral procession or at the cremation. I have no knowledge whatsoever of any facts connected with the illness, death or cremation of the Kumar. I only heard of the death, that is all."

The statement contradicts his present evidence in toto, and if that statement was honestly made, it proves that his present evidence is wholly unreliable. As I have said, Matilal Ganguly admitted in his cross-examination that he had made a statement to Hiranlal Mukherjee, and the only explanation he offered was that he was so ill at the time that he did not know what he said. It is interesting in this connection to read the cross-examination of Hiranlal Mukherjee. It reads "*Question*—At the time you recorded the statement had you any suspicion that the people looking after the defendants' affairs

were making one person personate another? *Answer*—I don't understand I had no suspicion that they were palming off some body on me as Matilal Ganguly *Question*—I put it to you that on looking at the signature on *Ex Z* (252) you cannot but realise that it is not the signature of Matilal Ganguly *Answer*—Matilal Ganguly signed it in my presence The signature here reads M L Ganguly I did not scrutinise the signature after it was written in my presence *Question*—You realise you were too young in 1921 to protect yourself against defendants' agents? *Answer*—No *Re-examination*—I knew Matilal very well when I recorded his statement. He was an assistant under me "

In view of the fact that Matilal Ganguly had already admitted that he had been examined by Hiranlal Mukherjee and in view of the fact that Matilal Ganguly was an assistant in the office under the control of Hiranlal Mukherjee, a more reckless and unprincipled cross-examination it is difficult to imagine

Sushila Sundari Devi in cross-examination stated

"I heard the next day of a funeral procession of the Kumar, but then it was faked, I heard, as the body was a body taken from the Victoria Hospital All this I heard The body was a dead body, I heard

Q—You heard this on the day following the night on which your brothers returned from *sasan*—did you?

A—I heard it next morning This too was in everybody's mouth at Darjeeling"

In view of the fact that no body else pretends that the story of a substituted body being burnt was current at Darjeeling on May the 9th and in view of the fact that the plaintiff's party have now abandoned the false story of a body being taken from the Victoria Hospital, it seems to me clear that this lady is rather reckless in her untruths

PROCURED EVIDENCE

Jatindra Chandra Chakravarty, the only one of the party who pretends that he joined the procession, deposed as follows "On the day I heard the second Kumar had been cremated, I heard his body had been carried to the *sasan* I heard that day that the body was taken with a procession from chowrasta, and I thought, though I did not hear it, that it was coming from the "Step Aside" I did not enquire how the corpse could come to the "Step Aside" or to the chowrasta I did not enquire where the corpse was found Nor when found or by whom I did not enquire I did not enquire how it disappeared, as this fact I knew", and later in cross-examination he states "In 1921 I heard the Kumar had come back, I was at Darjeeling I did not discuss the matter with other people as all had read the papers I did not tell anybody that I had gone to cremate the Kumar, as I dared not talk about matters offending a Raja, but the inmates of my house knew of course" It seems to me that the latter explanation is merely silly, and his statement that he made no enquiries is so unnatural that it suggests strongly that he had never heard that the body was missing It is interesting to note that this witness is one of two witnesses who assert that he took shelter during the storm in a slaughter house which did not exist It is clear from this evidence that this group of witnesses has been procured by the plaintiff's men and that their evidence has no value whatever

FALSE STORY OF SHELTERS

There has been cross-examination of the witnesses regarding their conduct when the rain storm occurred at the cremation ground on the night of May the 8th, and particularly with regard to the place wherein they are supposed to have taken shelter during the height of the storm. To appreciate this evidence it is necessary to bear in mind the physical features of the locality near the cremation ground. In approaching the old cremation ground in 1909 a large part of the journey was along the old Sudhir Kumari Road. On the top of that road, that is, the end of the old Sudhir Kumari Road furthest from the cremation ground, another road or road track branched off in a northwesternly direction to the site of the old slaughter house. The present Mahomedan burial ground is near the site of the old slaughter house. Starting from the angle between the track leading to the site of the old slaughter house and the old Sudhir Kumari Road, there commences a deep ravine which winds down the hill towards the west and ultimately joins the Bryngwyn Jhora. If, therefore, any one on the site of the old cremation ground desired to go to the old slaughter house, he would either have to descend into the deep ravine and climb up the other side in order to reach the slaughter house, or else, go up the hill the whole length of the old Sudhir Kumari Road until he reached the junction with the slaughter house road, and then go down the hill again. From the top of the old Sudhir Kumari Road to the site of the old cremation ground there is now only one building on the side of the road. That building is the new slaughter house, and it is to the south of the old Sudhir Kumari Road, that is, on the left hand side as one descends. That old slaughter house was not in existence in the year 1909.

NON-EXISTENT OLD SLAUGHTER HOUSE

The following letter (*Ex Z 356*) shows that the old slaughter house was demolished sometime before the 22nd of June, 1909. It is a letter from the Vice-Chairman of the Darjeeling Municipality to the Sanitary Commissioner for Bengal requesting him to help with a design and plan for a slaughter house. It reads: "Sir, As the land below the slaughter house shipped at the last heavy rain endangering the said house, it was demolished, but as a new house is to be built soon, I have the honour to request that you will be good enough to help us with a design and plan of a slaughter house early to enable us to proceed with the work accordingly." It is not clear from this letter that the old slaughter house had been demolished before May, 1909, but in the argument before us it has been assumed that the demolition had occurred before the date of Ramendra Narayan Roy's cremation. The site of the present slaughter house was formerly part of Mr Morgenstern's garden which was land belonging to the Municipality and leased out to Morgenstern. The letters *Exs Z 356(5)* and *Z 356(8)* show that the site of the present slaughter house had not yet been taken back by the Municipality from Mr Morgenstern and was still, in May, 1909, and indeed up to July, 1910, part of Mr Morgenstern's garden. It has been admitted that the new slaughter house was not, in fact, erected on the present site until long long after May, 1909. It is clear, therefore, that persons who fled from the cremation ground in May, 1909, could not have sheltered in the new slaughter house, and it is inconceivable that they could have gone to the site of the old slaughter house, even if the old slaughter house was then in existence. Mr Chatterjee on behalf of the plaintiff has argued that Darjeeling must have had a slaughter

house at that time, and that, therefore, there must have been a temporary slaughter house somewhere and these witnesses probably sheltered in that temporary slaughter house. From the evidence on record there is no reason whatever to believe that any such temporary slaughter house existed, and there is certainly no reason to believe it existed on the side of the old Sudhir Kumari Road. The land to the south of the Sudhir Kumari Road was then Mr Morgenstern's garden which had not been taken back by the Municipality, and, therefore, could not have been used at that time as the site of a temporary slaughter house. The northern side of Sudhir Kumari Road is on the very brink of the deep ravine to which reference has already been made. It seems to me clear that there was in May, 1909 no slaughter house on the road between the old cremation ground and the inhabited buildings to the north to which people could have fled for shelter.

NO SHEDS TO SHELTER IN

In this connection it is desirable to note that some other witnesses have stated that they took shelter in a shed in Morgenstern's garden. Morgenstern was examined as a witness by the defendants and deposed that there was no such shed as that described by the plaintiff's witnesses. His evidence is that "in 1909 we had a number of glass houses and conservatories in our vegetable garden, no sheds or huts." Later, however, in answer to a question from court he states that they had some servants' quarters by which he meant quarters of mahis, servants and syces, and these were situated about 20 or 30 yards to the north and west of his residence.

They were in the direction to the east and south of Sudhir Kumari Road. These quarters were made of corrugated sheeting and plain sheeting. Some of the witnesses who deposed that they fled from the cremation ground have stated that in their flight they went up the Sudhir Kumari Road, and then leaving the road, they went by a hill-track or *chorebatar* until they came to a shed. Among these is Kiran Mustaphi. This gentleman describes the shed as a shed near the slaughter house. But it is obvious that he could not have gone to any shed which was near the slaughter house. The learned judge in his judgment has stated that the sheds in which these witnesses sheltered are precisely the huts to which Mr Morgenstern referred in his evidence. I am unable to believe that the living quarters of mahis and servants could be the sheds described, or that these people could take refuge in such living quarters without knowing that they were dwelling huts and without the knowledge of the inmates of those huts. The inference drawn by the learned trial judge seems to me wholly unjustified, and the evidence on record goes to show that there were in fact no such sheds for the witnesses to shelter in as the witnesses alleged.

UNCONVINCING EVIDENCE OF OTHER WITNESSES

The evidence of the other witnesses to the evening cremation seems to me also wholly unconvincing. It is not possible to say from their evidence that they are necessarily untruthful, but the conduct they ascribed to themselves and the manner in which they deposed is wholly unconvincing. For instance, Kiran Mustaphi, one of the witnesses who stated that he attended the cremation procession and returned to the cremation ground to find that the body was missing, deposed that he heard subsequently that the

body had been cremated. But he asked us to believe that he never made any enquiries as to what had happened to the corpse, or where it was found, or how it came to be cremated on the following day. In fact, he deposed as though the missing of a corpse from the cremation ground was an everyday occurrence which was not likely to be discussed and talked about.

Manmatha Nath Choudhury deposed that he received a call on the phone from Sanjib Lahuri to assist in the cremation. It is obvious that Sanjib Lahuri was not in a position to send a telephone message to this witness, and the witness must be making a mistake in this particular detail. This is a witness who from his own statement was in the habit of assisting at cremations in Darjeeling, and yet he asserts that the new cremation ground was not used until the new Sudhir Kumari Road was built. In this respect his evidence is obviously untrue, as the new cremation ground came into use from 1907 and the new Sudhir Kumari Road was not built until four or five years later. The witness states that he helped at two or four thousands of cremations, and yet he is uncertain whether he attended the cremation of such a famous person as sister Nivedita at Darjeeling. I cannot imagine anybody paying any serious attention to the evidence of this particular witness.

Chandra Singh is a hillman and is one of those who stated that he sheltered in the non-existent slaughter house. He stated that when he heard of the death of Ramendra Narayan Roy he went upstairs at Step Aside to see the body, a statement which I cannot believe. His explanation for accompanying the party to the cremation ground seems to me singularly unconvincing.

PURCHASE OF FUNERAL REQUISITES

With regard to the purchase of fuel, the case put forward by the plaintiff is that one Mahammed Ashraf Alam was returning from the races at Lebong, and that when he reached "Step Aside", he heard the sound of weeping. He entered the compound and met Sarif Khan, the orderly of Ramendra Narayan Roy, in the compound. He there learned of the death and was going away, when Sarif Khan called out to him to wait, as the Babu wanted to purchase the funeral requisites. Thereupon Md Ashraf Alam accompanied the Bengalee Babu and two servants to the shop for the purchase of fuel and other requisites. The witness stated further that an hour or an hour and a quarter later he saw the funeral procession pass. He stated that as the number of upcountry Mahomedans in Darjeeling was small, he picked up an acquaintance with Sarif Khan and was fairly intimate with him. He stated further that on the following day in the evening he heard that the body had disappeared from the cremation ground. He also heard that another body had been taken out for cremation on the morning of May the 9th. Yet he stated, "When I heard next day in the evening that body had disappeared, I did not think it important enough for me to go and enquire of Sarif Khan."

A number of witnesses from the shop also deposed to Ashraf Alam's arrival for the purpose of buying funeral requisites. The manner in which they gave their evidence and the manner in which they were procured as witnesses are highly suspicious.

Kedar Nath Pande is one of these witnesses. He deposed "Before the last Pujas I heard that I would have to depose. One Atul Roy met me, I did not know him before. He asked me how old I was, how long I was at Darjeeling, and asked me if I knew about the death of Raja of Dacca. I

told him I knew something, and did not tell him more I did not tell him that I knew nothing, or what I have said to-day, but I said I could depose what I knew "

Another of this group, Durgaprasad Baishy, gives a similar, rather foolish, explanation He says "A Babu came and saw me during the Pujas It was during the holidays in the month of Kowar He said, I would have to depose at Dacca, and paid my expenses He did not ask me what I knew, except if I knew of older times He did not ask me what I knew "

Another of the witnesses to the purchase of fuel is Jangbir Sinha Karky He is the son of the person from whose shop fuel etc, was said to have been purchased He deposed that at the time when the people came to make the purchase he was reading in the office room He was a boy of 14 or 15 years at the most He had never heard of the Kumar before He was engaged in his studies, and he had nothing to do with the transaction, and he did not tell anybody what he knew In cross examination he deposed "I have not been telling people that the Kumar's people purchased firewood from my shop I made my statement to my pleader yesterday, and before that, a few days before the last Puja holidays, Di Atul introduced me to a gentleman from Dacca and I told him this And not before that to anybody "

The evidence of these witnesses taken as a whole suggests that they are untruthful and they have been procured to depose falsely

WITNESSES WHO SAW THE EVENING PROCESSION

The learned trial judge seems to have been impressed with the evidence of Nasiruddin Ahmed This witness states that he saw the body being taken out on the night of May the 8th In cross-examination he deposed as follows "Next day I came out of my house at 8 or 9 A M and went to the Bazar which is quite close I returned home after an hour or one hour and a half after That morning I heard a cry of *haribol* This I heard before I went out of my house I heard it at 8 or 9 A M from my house I came out of the house A man with me at the time asked whose body it was I did not know the men in either procession, and can't say if they were the same The man we asked was a Babu He said "It is the body of the Kumar of Bhowal " We did not ask how it happened that the body had been taken at night and was being taken again in the morning Next day, Monday, when I heard about the body missing, I did not mention that I had seen the second procession of the Kumar " This conduct seems to me so unnatural that I am unable to place any reliance on the evidence of such a witness

Two of the witnesses have given rather remarkable evidence They are Santa Bir Shing and Bhangir Rauth Santa Bir Shing is one of those persons who saw (as he alleged) the evening procession and also the morning procession, but was not sufficiently interested to enquire how the same body could be taken out twice for cremation But the interesting part of his evidence was his attempt to prove the presence of sadhus at the cremation ground, He deposed as follows "I had gone home and taken my tea and smoked, and then I went out, got to the Bazar where sadhus used to be I saw the sadhus and sat near them till 8 or 8-30 P M Then the sadhus rose and left the place, and I left too and I went to my home, and the sadhus went ahead of me up to Ferndale Road, and at that point I parted from

them and went towards my home, they went their way towards the *sasan* * * * Before this day I had gone with the sadhus up to the *sasan* on 2 or 3 days. On the day I came home, parting from them, I had my meal and smoked and chatted and was seated when I heard a cry of *haibol* (cry of Hari) near the *Malgodam* (Railway godown). It was then 9-30 or 10 P.M. I suppose, but I can't say exactly. I stepped out of the house and saw a dead body being borne along. I descended on seeing it. A party of 20 or 25 men were going along. They were Bengalee Babus in dhuti. They had burning lanterns among them. I asked one of the procession, 'who is he?' He said "The Raja of Dacca is dead." In cross-examination, however, he makes it clear that he had been with the sadhus only to the new cremation ground. This obviously did not suit the plaintiff's version, and an attempt was made to get him to alter this statement in re-examination, but there, again, he reaffirmed his statement that he went with the sadhus to the new *sasan* only, and not to the old.

Bhanga Rauth is another witness who introduced sadhus at the cremation ground. He deposed that he and two companions went with another sadhu to the new cremation ground on the night of May the 8th and sat there smoking ganja. They saw coolies arrive with fuel for the cremation of Ramendra Narayan Roy and they saw the approach of the funeral procession. Rain then came and everybody fled. The witness and his companions are supposed to have fled away to the north, leaving the sadhu sitting at the new cremation ground. He deposed that on the night in question he saw three sadhus at the old cremation ground smoking ganja. Darsan Das, who is alleged to be one of the three sadhus, said that none of them smoked ganja and that they were not given to that vice. The witness said nothing about any cave in which the sadhus are supposed to have hidden, though, if his story was true, he must have run away past the cave and at least have had the opportunity of seeing the sadhus in that cave.

EVIDENCE WHOLLY UNRELIABLE

We have examined the evidence of all these witnesses to the evening cremation with the greatest care, and we are of opinion that the learned judge was right in the view he expressed that nobody would believe their evidence, unless there were independent reliable evidence to show that Ramendra Narayan Roy had died in the evening of May 8th and that his body had been taken out for cremation that night. The evidence adduced is wholly unreliable, and the evidence regarding the absence of rain that night and the fact that a body was taken out for cremation the following morning are strong indications that no cremation could possibly have taken place on the night of May the 8th.

STORY OF RESCUE

The next question for our consideration is how and by whom the plaintiff could have been rescued from the cremation ground. Before setting out the story of rescue as it was ultimately put forward by the plaintiff's witnesses, it is desirable to examine the earlier statements put forward by and on behalf of the plaintiff and to consider what was the extent of plaintiff's knowledge regarding the rescue. The plaintiff's case has been throughout that he lost consciousness on the morning of May the 8th and that he

did not recover consciousness until some days later, that he had no personal knowledge of what took place at the cremation ground, and that, therefore, he could not give out from that knowledge any details regarding the rescue. It was, however, his further case that he wandered the length and breadth of Northern India with his rescuers from the day of his rescue until some time in the year 1920.

PLAINTIFF'S STATE OF KNOWLEDGE ABOUT ALLEGED RESCUE

One would be inclined to assume that during the course of his wanderings he must have heard from his rescuers the full details regarding this very romantic and very unusual experience. That he had some conversation with his rescuers on the point is clear from his own evidence. In his examination-in-chief he said: "I had an idea how I had come to be among these people (sannyasis). This idea I came to have after I had taken the *mantra* (मन्त्र) (verse sacred to any religious order). After I took *mantra* I had a talk with my *guru* regarding this matter." *Question*: "Are you in a position to tell the learned judge what your own idea of the matter was after this?" (Objected to, allowed). *Answer*: "The idea I got was that I was found in a wet condition at Darjeeling *sasan* (cremation ground)." From this it is clear that he had some conversation with his sannyasi companions and had heard from them some details at least regarding his rescue.

It may, however, be suggested that sannyasis are not as ordinary men, and, therefore, though ordinary people could undoubtedly have discussed this extraordinary occurrence from all angles, sannyasis being men who have no interest in worldly affairs would be quite capable of dismissing the occurrence from their minds and not talking about it again. Granted that this might be so. We have still to take into consideration the fact that after the plaintiff arrived in Dacca and decided to claim the estate of Ramendra Narayan Roy, he and his supporters arranged for his *guru* Dharam Das to be brought to Dacca for the purpose of supporting his case. Even before this date the plaintiff's agents had been examining witnesses for the purpose of ascertaining all the facts in connection with the occurrence at Darjeeling, as the evidence of Padmini Neogy clearly indicates. It is obvious from this evidence, if evidence were necessary for the purpose, that the plaintiff and his advisers had already realised before June, 1921 the necessity of ascertaining exactly what had happened at Darjeeling and of obtaining evidence to prove what had happened. The plaintiff's *guru* Dharam Das Naga stayed for several days in Dacca at the house of the plaintiff and was questioned by the plaintiff and the plaintiff's legal advisers. It is reasonable to suppose that during this stay of Dharam Das in Dacca the details of the rescue of the plaintiff, if rescue there had been, would be given to the plaintiff or his legal advisers by the *guru*. Therefore, we have a right to assume that after August, 1921 the plaintiff was well aware of the details of the rescue, even if he was not in a position to produce witnesses to prove those details. After the departure of Dharam Das Naga from Dacca in 1921, the plaintiff and his advisers apparently met nobody who knew anything regarding the details of the rescue. The plaintiff and his advisers did not meet any of the other sannyasis concerned, and according to the sannyasi who has been examined as one of the rescuers, those sannyasis had kept the details to themselves, refusing to tell any one what had happened. In other words, whatever the state of the plaintiff's knowledge or ignorance was in August, 1921 regarding the events in Darjeeling, his knowledge or ignorance remained exactly the same.

when he himself came to depose in the year 1933. These facts should be borne in mind when the evidence regarding the rescue is examined.

DIFFERENT VERSIONS STORY AS GIVEN TO LINDSAY

The first piece of evidence we have on this topic is the statement made by the plaintiff to J. H. Lindsay on the 29th of May, 1921. In the note recorded by J. H. Lindsay at the time, the story was given in these words: "That he recovered his senses in the jungle in the hills in the presence of *one sadhu* who has since been his *guru*, that the sadhu said he had been senseless for 3-4 days, that the sadhu told him that he had found him lying on the ground as if he had been thrown there and that his body was wet with rain as it had been raining before he found him, that the sadhu did not say whether he found him in the day or night." As I have stated above, the plaintiff in his deposition has denied the truth of every word recorded by J. H. Lindsay in his note, referred to above, but we have some confirmation that this was the story given him from two sources.

STORY IN PAMPHLETS

We have in the month of June, 1921, a pamphlet published by the supporters of the plaintiff which is entitled "*Bhowale Katha O Nabin Sannyasi*." In the pamphlet the story given is as follows: "When the rain and storm ceased they on coming back to the cremation ground could not find the dead body of the Kumar any more. Thereafter it is said they went away setting the empty pyre on fire. By chance a sannyasi of uncommon power finding a youth senseless, at the time of passing by that place, took him to his own hermitage and brought him round by nursing." The plaintiff in his own evidence, as I have stated above, said that he got the idea that he was found in a wet condition at Darjeeling cremation ground.

If the plaintiff had not told J. H. Lindsay that he was rescued by a sannyasi, it is curious that this statement should have found its way into the pamphlet issued by the supporters of the plaintiff within the month immediately following the plaintiff's interview with J. H. Lindsay.

STORY IN DEFAMATION CASE

In the Defamation case instituted by Dr. Ashutosh Das Gupta against the son of the principal supporter of the plaintiff on account of the allegations made in the pamphlet, "*Fakir Beshir Panch Raja*", the defence examined two witnesses whose evidence is of some importance. The first of these witnesses is Jogesh Chandra Roy. The second is Rabindra Nath Sanyal. These witnesses did not depose to the rescue of Ramendra Narayan Roy, but they deposed to the circumstances of his departure from Darjeeling some days after the alleged rescue. Jogesh Chandra Roy deposed as follows: "On following Monday *Sala Babu* and the party left Darjeeling by the 9-44 A.M. down train, as no reserved compartment is attached to the mail train. Ten or twelve days after, I saw the Kumar in the garb of a sannyasi, coming down Darjeeling in a train, with a sannyasi. I recognised him to be the Kumar of Bhowal. I was in the platform. Rabindra Nath

Sanyal (D W 15) was also in the platform. The head of the Kumar was then shaven. Probably his cloth had a border. I knew the other sannyasi. He was Aghori Baba. I forwarded to the Kumar in order to speak to him, but (he) turned his face downwards. At that time I was called by one and left the place. There was rumour at Darjeeling that Aghori Baba picked up dead bodies and was convicted once. Hence we used to fear * * *. The Kumar was coming down by the 9-44 A.M. train with a sannyasi. I was on duty then. I was working in the platform. From his complexion, eyes, lips, face I recognised him to be the Kumar of Bhowal. I did not talk either with the Kumar, sannyasi or his companion. I did not notice them talking with any one. I came to know Aghori Baba after my arrival at Darjeeling. I don't remember to have seen him at Darjeeling after I had seen him with the Kumar."

Rabindra Nath Sanyal deposed: "Ten or twelve days after *Sala Babu's* departure from Darjeeling, one day I saw the Kumar of Bhowal in the dress of a sannyasi in an old third class trolley carriage by the 9-44 (A.M.) train. I saw him sitting there. His head was clean shaved. He had a *gerua* dress and a *hamandalu* in hand. I watched him for about 8 or 10 minutes from a distance of 2 or 3 cubits. I recognised him and observed him carefully. I recognised him to be the Kumar of Bhowal whom I had seen in the platform some days back. Another tall sannyasi was with him. When he had gone for tickets I went near the trolley and observed the Kumar carefully. I did not see the tall sannyasi before. When he was returning, I went to the Parcel office and told Ram Das *alias* Mohim Bhattacharjee and Bepin Behari Bhattacharjee, parcel clerks, that the Kumar of Bhowal was going, and if they would like to see him, they should come with me. Bepin advised me not to associate myself with the affairs of big people, hence I remained quiet and did nothing. When the tall sannyasi was absent, I cried out: "You all come and see the Kumar of Bhowal, the newly made sannyasi (*sic*)". At this the Kumar moved down his head showing an angry mood towards me. Hearing my cries 7 or 10 Pahari coolies and two of my peons came and saw him."

It is clear from this evidence that the story in the Defamation case was that Ramendra Narayan Roy was then accompanied by only *one* sannyasi. The story which J. H. Lindsay says was given to him was also of *one* sadhu. It may be argued that the present plaintiff was not a party to the Defamation case, and therefore, cannot be held responsible for the evidence given in that case. There would be some force in this argument, if it were not for the fact that copies of this evidence were appended to the memorial presented by the plaintiff to the Board of Revenue on the 8th of December, 1926, and represented by him to be true evidence. It is clear, therefore, that in 1926 the plaintiff was still asserting that after his rescue he was accompanied by one sannyasi only, and that that sannyasi was Aghori Baba. In view of his evidence the story now given is interesting.

VISIT OF DHARAM DAS NAGA TO Dacca

We must here digress in order to consider the visit of Dharam Das Naga to Dacca in the year 1921.

J. H. Lindsay learned at an early date either from the plaintiff himself or from some other source that Bawa Dharam Das Naga was the *guru* of the plaintiff. Accordingly, he deputed a police officer named Momtazuddin

to go to the Punjab in search of Dharam Das and to question the latter regarding his *chela* Sundar Das. Momtazuddin was given certain photographs to help him in his search but whether those were photographs of the plaintiff or not is one of the disputed questions in the case. It is sufficient for our present purpose to observe that Momtazuddin succeeded in tracing Dharam Das Naga and persuaded the latter to make a statement before an Honorary Magistrate on the 27th of June, 1921. That statement reads "I reside in Mauza Sansara, Thana Ajnala in the district of Amritsar. The photo shown to me is of my *chela* Sundar Das. At first his name was Mal Singh and he lived in Mauza Aujla, district Lahore. His paternal uncle's son Naram Singh, who at present lives in chak No. 47 in the district of Montgomery, came to me with Mal Singh at Nankana Sahib. That was 11 years ago. I then made him my *chela*. Mal Singh's age was 20 years at that time. Mal Singh had been brought up by his paternal uncle Mahanga (?) Singh and Labh Singh of Aujal. It is six years that Sundar Das has left me. Sundar Das had cat-like eyes. His complexion was fair. I am his *guru*. I saw him in the Kumbha mela at Prayagraj 4 years ago. After that I have not met him. The photo (Ex. P1) is of my *chela* Sundar Das."

In the meantime, the plaintiff's advisers had also thought of sending men in search of Dharam Das. Sati Nath Banerjee, son-in-law of Jyotirmoyee Devi, was one of those who went to bring the *guru*, and he described the search made by them. Suffice it to say that the search was successful, and Dharam Das Naga was brought to Dacca by the plaintiff's adherents in August, 1921, and he remained in Dacca as a guest of the plaintiff for three or four days. J. H. Landsay, Collector of Dacca, heard of the arrival of Dharam Das and made arrangements to interview him in company with P. S. Quarry, the Superintendent of Police, Dacca, who was an expert in the dialects spoken in the United Provinces and the Punjab. On the 28th of August, 1921, Landsay wrote a letter to the Commissioner of the Division, reporting the arrival of Dharam Das and explaining the course he proposed to adopt. It appears that J. H. Landsay made some attempt to interview Dharam Das, but the latter left Dacca secretly without meeting Landsay. We have very little information regarding the activities of Dharam Das Naga while at Dacca, but we do know that he visited Ananda Roy, a very senior pleader, who was one of the staunchest adherents of the plaintiff. We also know that the *guru* did not make any public announcement in favour of the plaintiff.

ALLEGED REASON FOR ABRUPT DEPARTURE

The plaintiff asserts that the *guru* Dharam Das left Dacca after a stay of 2 or 3 days, "as the police were making *gondogol* and that he left for fear of the police." When cross-examined the plaintiff had to admit that he did not know how the *guru* was oppressed by the police during his stay at Dacca. All he could say was that he saw police mounting guard outside the house, he did not hear them speak to the *guru*.

The statement that police were posted outside the house during the stay of Dharam Das is also made by Satinath Banerjee. Jyotirmoyee Devi gives a much fuller account of the visit of the *guru* and the reasons for his departure, viz. — "I saw Dharam Das, *guru* of the plaintiff. I saw him at Dacca probably in the year we came to Dacca. It was in Bhadra. I sent out people to fetch him. I had sent out Sagar, Mohabir, a sadhu and Akhil Roy

They brought Dharam Das to my *basha* (house) My son was then in the house and also the plaintiff Dharam Das saw me and the plaintiff and Budhu He saw us together He said something I remember what he said He stayed at my house 4 or 5 days or 3 or 4 days He spent most of his time counting beads I did not see him or hear him speak to anybody except myself and the plaintiff

"Q —Did Dharam Das ever say or suggest to you that the plaintiff was a Punjabee or that he was Sundar Das ?

A —No Not in my hearing or presence Dharam Das left for fear of the Magistrate and the police I saw Police loitering near my *basha* during his stay I knew why he was afraid of the Magistrate He said something as to why he was afraid of the Magistrate He said this when I implored him to stay I asked Dharam Das about my brother He answered my questions He gave an account of the plaintiff from the beginning to the end when they came in touch and when they parted I asked him where he had got the plaintiff He answered that I asked under what circumstances he had got him He answered that I do not know where *guru* Dharam Das is I have been making inquiries into his whereabouts "

But in cross-examination she made it perfectly clear that there was in fact no oppression by the police Her evidence there reads

"I don't know what reasons Dharam Das had of being afraid of the police I did not ask him He said, 'the Magistrate has sent a letter to me, and therefore, I will go away' I did not ask him on what subject the letter was I don't know if the Magistrate asked Dharam Das to see him The arrival of Dharam Das caused no *ṛṣṭi* (commotion) that I could see I did not see any outsider come to him He stayed in a room upstairs and nobody had permission to go to him He stayed for 3 or 4 days I don't remember if Mr Lindsay's letter came on the day after his arrival Mr Lindsay's letter is not in my possession I can't say who read that letter I don't remember whether he left that day or the day after"

UPSHOT OF THE EVIDENCE CHANGE OF CASE

It is clear, therefore, that the legal advisers of the plaintiff had interviews with Dharam Das Naga, and that the latter left Dacca suddenly without giving any public acknowledgment of the truth of the plaintiff's story, and it is equally clear that there is no reason whatever to believe that the police drove him away Moreover, with the exception of the vague statement made by Jyotirmoyee Devi, which has been quoted above, there is nothing on record to indicate that any further attempt has been made by the plaintiff or his adherents to secure the evidence on oath of this most important witness The following facts, therefore, emerge from this mass of evidence, and require serious consideration, viz —

For at least six years after his arrival in Dacca the plaintiff persisted in the story that he was rescued by one sannyasi and one sannyasi only then in 1933, though after submitting the memorial Ex J he had not come in contact with any person who was acquainted with the truth, he altered his story and made out a case of rescue by four sannyasis named Dharam Das, Pritam Das, Loke Das and Darsan Das

The physical impossibility of a rescue by one man only may explain the change of story, and the fact that Dharam Das' name is tattooed on the arm of the plaintiff as that of plaintiff's *guru* compelled him to name this man as one of the rescuers. These four persons are the only people in the world who could prove the story of rescue, if it really occurred. Dharam Das has refused to support the story, and no convincing explanation of his refusal has been offered. There is nothing on record to show that any attempt has been made to secure the evidence of Pritam Das or Loke Das.

STORY OF DARSAN DAS ALIAS GOPAL DAS

Ultimately, as the plaintiff was about to close his case, he put forward a sannyasi who had been well known for a dozen years in Dacca district as Gopal Das and who had not been known to the outside world by any other name, and asserted that this man was his rescuer Darsan Das. After describing how he, Dharam Das, Pritam Das and Loke Das had visited Darjeeling and had sought out a convenient place at which to stay near the cremation ground, this witness described how they found a sort of cave which was situated a few cubits from the old cremation ground. In this cave they used to spend their night. The witness proceeded to give the following story.

"At Darjeeling while we were there took place a strange thing. One day, at night, after a *prahar* of night was past, we were seated, talking religious matters when we saw cloud in the sky. A little after, rain started falling in drops. At that time we heard the cry of 'হবিবোল হবিবোল' (*haribol, haribol*). Bawa Loke Dasji said, 'Niku, get out and see.' He was considerably my senior, and used to call me Niku. I got out and saw a lot of people. I saw the light from lanterns which were among those people. Babaji asked, 'What do you see?' I said 'A great many men.' He said, 'A great many men?' 'What could you do? Come in.' I got in. The wind was blowing hard and the sky overcast (বহুত মেঘ ছায়)। We sat down to take the name of God. It got late (বহুত দেবী হো গিয়া) when Babaji told me 'There was a great cry of *haribol* outside but we don't hear anything now.'

One sadhu should get out and see (যাও এক সাধু বাহাব হোকে দেখ)। I went out and saw that there was no wind (হাওয়া নেহি হায়), but rain was falling (নে হোতা হায়)। I heard a sound in the *sasan*. I waited. I heard a sound again. I waited. I heard a sound again. Then I told the Babaji, 'there is some sound.' He said, 'What sound?' I said 'I do not know. Please come out.' Bawa Loke Dasji came out and said 'Where is the noise?' 'That side, eastwards', I said (witness also moves his hand towards the east). Babaji said.

"লাটান লও শিগ্গিব" (Get the lantern quick!) I took the lantern out and the Babaji Loke Das said 'Come with me' (চল হাব্বা সাং)। We two went to the *sasan*. Loke Nath asked me to bring the lantern. I shewed it over a *manja* upon which was a man. Babaji said 'Hold the lantern thus' (shows holding the lantern over the *manja*)। I held it thus (shows)। Babaji said, 'I am opening it' (ইনকো খোলতা হায়)। Babaji took off the cloth from the side of the head—he pushed the cloth towards the foot after unfastening the cloth. Underneath that was another cloth tied round the man by a rope like a নৌদারিব দড়ি (curtain rope)। The upper cloth was fastened to the legs of the *manja*. Babaji pushed back the upper cover, and he opened also the

cover underneath Then Babaji put his hand over the man's mouth (shows putting hand over mouth and nose) Then Babaji said 'Niku, this man is living' He said 'দোষরা সাধুকে বোলা লেও' (Call in another sadhu) He, Loke Nath, stayed on and I went to call the other sadhu I said to the sadhus 'Babaji wants you' So the two other sadhus came with us Bawa Loke Nathji said এ আদমি তো জিতা হায, কাঁহা লে যাওগে, হায লোক্কা বহেনা কা জাষণা খোডাই হায, আচ্ছা লে চল, (This man is alive, where will you take him to? we have got little space for ourselves to live in, all right, take him with us) We left the clothes that had covered the body there, and Babaji said মে হোতা হায জলদিসে লে চল (Rain is falling, take him quick) When we carried the body, "the man" was shaking like this (shows) with cold and at times uttering a sound like "হুঁহু" (faint groan) We took him downhill to where we were living Babaji Loke Das said 'He is shaking with cold Take off his clothes' He had *gunji* (banian) and other things and these were wet Babaji said 'Put a dry cloth round him' I did so Babaji said, 'Put a কব্বল (blanket) round him' Then Babaji Loke Das said, 'Take him to the *ghar* below', meaning a *ghar* further downhill which was there Babaji Loke Das said 'It is raining hard His cloth will get wet again Take a second blanket' Then we four sadhus took the man—three of us held him as we proceeded—and Pritam Das who was feeble-bodied carried the lantern and the *chumta* (tongs) ahead We took him to the *ghar* but it was locked up Bawa Loke Das said 'It is raining You can't get the *kundi* (key) here Open it by the *chumta* By the *chumta* the chain was wrenched open, though the padlock was untouched We got into the room We had the lantern and found a *manja* inside Babaji Loke Das said, 'Put the man on the *manja* We would be on the floor' We put the man on the *manja* Babaji Loke Das said 'Go two of you and get the fuel and things from there and let two remain here' These were brought We stayed on the floor, lighting a *dhum* on the floor We four people did not sleep during the night "

CLEAR INDICATIONS OF FALSE EVIDENCE

The learned trial judge accepted this man's evidence as truthful evidence on the ground that he was not broken down in cross-examination and that his story was a consistent one In my opinion, the evidence given by the witness bears every indication of being false evidence In the first place, there is no reason whatever to believe that any such cave as was described by the witness existed near the cremation ground at that time It is certain that if it existed, it has since disappeared leaving no trace J E Morgenstern, who lived at the "Rosary" and whose father at that time cultivated the Market Garden situated partly below the cremation ground and partly above the cremation ground, has deposed that so far as he knows there was no such cave at the place indicated Morgenstern was only a boy of 10 at the time, it is true, but as a boy he was likely to wander all over that area and may be presumed to be well acquainted with it It is also scarcely likely that the cave disappeared as soon as rescue had been effected It seems to me that the evidence of Morgenstern furnishes proof that the cave itself did not exist But we have another indication in the evidence of Gopal Das himself In his cross-examination Gopal Das gives the following evidence "I saw the two *sasans* on the same day when I was looking about for a shelter On the *sasan* itself there was no hut or shelter or shed at either *sasan* I saw these further down Q You saw any *chappar* or any shed or *ghar* on the

new *sasan*? A No Q Any such *chappari*, etc., on the new *sasan* so far as it is flat? A None If there were any and these suitable, we would have stayed there I saw *ghars* further down towards the west Q How far off? A May be 200 or 400 yds "

As it is admitted that there was a shed at the new cremation ground, it is clear that the *sannyasis*, if they had been there, would have stayed at the new cremation ground and not in this cave Lest it be supposed that they had not gone down so far as the new cremation ground, and, therefore, were ignorant of the existence of the shed there, it should be noted, first, that the new cremation ground is visible from the old, secondly, that according to this man's evidence, at the time of the rescue they were acquainted with the hut at the blanket factory and knew the road to that hut That road or rather track passed by the side of the new cremation ground Therefore, if the *sannyasis* knew the way to the blanket factory, they must have known of the shed at the new cremation ground In re-examination an extraordinary question was put to this witness, and a still more extraordinary answer given by him "Question You said there were no *ghar* and *chappari* there What do you mean by these—*pucca* or *kutchi*?" (Objected to Allowed) Answer "*Kutchi ghars* I thought, he meant" It is obvious from his previous statement that there was no question as to whether the buildings were *kutchi* or *pucca*, and it seems to me clear that the witness had been coached to give this answer, and that the question was deliberately put in a leading form to get this answer

Returning to the story of this witness, I find it difficult to believe that a person who had passed to arsenic poisoning would be able to moan with such vigour when rain fell upon him that his voice would be heard above the storm by a group of *sadhus* in the cave in spite of the fact that he was wrapped in a cloth from head to foot In this connection, the evidence given by the medical experts examined on behalf of the plaintiff should be borne in mind Both Dr MacGilchrist and Dr Bradley were asked whether if the case put forward by the plaintiff were true, and rain had fallen upon him at the cremation ground, his recovery would be expedited Their evidence in answer to these questions deserves consideration Dr MacGilchrist deposed as follows . Question "Suppose the patient had a collapse on account of arsenic poisoning and his body has been removed to the cremation ground and all this in Darjeeling, fully covered up from head to foot, could open air and a touch of rain bring him back to consciousness?" Answer "If the dose was not fatal, time alone would do so It is only a matter of time" Question "Would open air and rain accelerate it?" Answer "It might accelerate evidence that he was alive to any one present, because the prescription contains a very large dose of strychnine which exaggerates reflex actions of the spinal cord, so that touching anybody with finger, or with a stick, or even a blast of wind might cause general convulsions, although the patient was still unconscious Strychnine causes *Opisthotonus*—i.e., the body becomes rigidly arched—if he lies on his back, the body might rest on the head and heels and the back in an arch"

Dr Bradley deposed Question "Supposing the patient at Darjeeling had had a collapse on account of arsenical poisoning and his body taken thereafter to the cremation ground, would open air or the touch of rain have the effect of reviving him?" Answer "Not of itself Time, if it was not a fatal dose, would revive him" Question "Would open air and rain accelerate evidence of his being alive?" Answer "That is a different question Then

strychnine comes in I am assuming you have in mind that prescription"
Question "What would be the effect of that?" *Answer* "A sudden dash of cold water would probably throw the body into convulsion"

It is clear from the evidence of these doctors that they did not believe that the shower of rain could have produced the effect described by Gopal Das, unless of course the patient was suffering not merely from arsenic poisoning but from strychnine poisoning.

STRANGE CONDUCT OF SUPPOSED RESCUERS

A curious feature of the story of Gopal Das is his utter inability to explain why they took away the body from the cremation ground and made no attempt to restore the man to his relatives. His evidence on this point reads as follows. "It occurred to us that the party who had brought him might come back, and for fear of that, we removed the man as quickly as possible—we have put our hand to the thing, and what would they say if they found us?" *Question* "Did it occur to you that these people had come to cremate him and would be glad if they saw 'the man' alive?" *Answer* "No. We were glad we had got him. It did not occur to us that the other party would be glad." *Question* "It did not occur to you that these people might be friends and relatives and might be glad to find him alive and might also be pleased with you?" *Answer* "If they were like that, they would have nursed him better at home and not left him at the *sasan*." *Question* "Finding him alive you thought that they had come to cremate a living man?" *Answer* "We did not know whether they had brought him knowing he was dead or knowing he was alive. We did not know." *Question* "It occurred to you that there might be *dusman* (enmity or wickedness) in their conduct?" *Answer* "Such a thought did not occur to us at the time." *Question* "Why were you afraid of their coming back?" *Answer* "We did not know with what object they had brought him, and they might come and say 'Why have you brought him? Why have you touched him?' and they might take us to task." *Question* "You thought they would be angry if they found him alive?" *Answer* "We did not think if they would be angry or glad. We were glad to have him and wanted to remove him." *Question* "You thought they might beat you?" *Answer* "They might put us to trouble, but we did not think what exactly they would do. We only thought their coming would mean no good to us. There was no time for us four to take counsel then—at that moment all we thought of doing was to remove him as quickly as possible, there would be time for thought afterwards. We did not think that the other party might snatch the man from us—no time to think all that. Our object was to hide him and not to tell any body about him—we have got a dead man living, it was a *sabbastu* (a blessed thing) and had to be cherished tenderly."

A more unconvincing explanation of their conduct is difficult to imagine. But having behaved in this extraordinary manner, the witness proceeded to say that they had no interest in finding out the identity of the man they had saved. They made no enquiries in the Bazar as to who was taken to the *sasan*. They did not feel any interest in the matter at all. This too seems to me highly improbable. It seems to me, therefore, that the story as given by this witness is unconvincing, and it is essentially different from the meagre outline given by the plaintiff in his memorial, though, if his case is true, he might have been aware of all the details by the time he submitted his memorial.

SUSPICIOUS MANNER OF COMING TO DEPOSE

But the most extraordinary part about this evidence is the manner in which this witness Gopal Das came to depose. Gopal Das admitted that he was known throughout Bengal and particularly in the district of Dacca for many years as Gopal Das. He stated that the plaintiff knew him by both names Darsan Das and Gopal Das. He stated that his *guru* gave him the name of Darsan Das, but within a few months of receiving the name he had persuaded the *guru* to allow him to be called Gopal Das. This story is in itself unconvincing. But no explanation is forthcoming why the name Gopal Das was not given out by the plaintiff. Gopal Das was a well known figure in Dacca. He had been visiting Dacca for years. He had even stayed in the house of Jyotirmoyee Devi at Jaidebpur within a year or two of the plaintiff's appearance in 1921, and yet the plaintiff does not seem to have heard of him all these years. The plaintiff did not mention his name as Gopal Das, and this man did not tell anybody that he knew the history of the plaintiff. During the years that this witness was wandering about Eastern Bengal and more particularly in the district of Dacca, the plaintiff's history was the subject of conversation in almost every house. The witness himself must have heard of it and must have known of this happening, yet he says he made no attempt to see the plaintiff. He was asked by Billoo, nephew of Jyotirmoyee Devi, a lot of questions about Ramendra Narayan Roy. Billoo asked the witness if he knew anything about the plaintiff, and the witness denied any such knowledge. The only explanation he could give for this was that his own *guru* had warned him that he was not to go near the man, as he might get into trouble like Dharam Das, if he did, and further, that "My *guru* had forbidden me to tell anything about him. He forbade me to disclose anything until he deposed and other people deposed, and he was established to be the Raja." In view of this statement it is curious that he should depose that on his return to Dacca in January or February, 1934, certain Babus approached him and told him to go and see him (the plaintiff), and that there was no fear then, as there were lots of pleaders, and witnesses in large numbers had been examined and that the evidence of the plaintiff was also over. The explanation given by this witness of his silence between 1921 and 1933 is unconvincing. His denial of all knowledge of the plaintiff when questioned by Billoo and his suspicious change of name are all circumstances to be viewed with the gravest suspicion. It is a curious circumstance also that even as the plaintiff himself was unable to mention the name of any place in Bengal through which they passed after leaving Darjeeling until they reached Benares some eight months later, so this witness too was unable to mention any place in Bengal through which they passed on the way to Benares. Another curious circumstance is that this witness deposed that as soon as the plaintiff came to his senses after his rescue, they found his speech impeded. In other words, this witness attempted to support the now abandoned theory that the plaintiff's tongue was affected by some corrosive poison. To my mind, the evidence of this witness is unconvincing in the extreme.

CORROBORATING WITNESSES UNCONVINCING EVIDENCE

To support this witness three other persons were examined on behalf of the plaintiff. They were Bejoy Krishna Gupta, Srish Chandra Gupta Sarma and Girija Bhusan Roy. The manner in which they were discovered is

interesting Girija Bhushan Roy seems to have been the first of the three to have been discovered by the plaintiff's party. He deposed on the 14th January, 1934. His explanation as to the way in which his evidence was obtained is as follows: "During Christmas holidays I understood I would have to depose. I had told Babu Surendra Nath Mukherjee, pleader, about the incident. I mentioned about a month before in the course of conversation. I had gone to his house after the offices opened after the Pujas. I had gone to his son to see if he who is in charge of a godown of Messrs Martin & Co could buy any of my wood. I went to him in Kartik, towards the first part of Kartik. Surendra Mukherjee aforesaid is pleader at Alipore. I don't know if his son is called Dwigen Mukherjee. I told Surendra Babu as he and a retired Sub-Judge were talking about Bhowal Kumar then. *To Court*—The Sub-Judge's name I don't know, but he said he lived in Harish Mukherjee Road and his house was at a place near Pandua, Hooghly."

Of the other witnesses Bejoy Krishna Gupta stated: "I do not know anybody on the side of the plaintiff. I never knew of them. I have not got any summons. One Monmohan Babu came to me in company of Girija Babu from Calcutta. They came to me on Thursday last." Srish Chandra Gupta Sarma deposed: "A man residing at Bhowanipur whose name I don't know asked me on Friday last to come and depose what I knew. He said nothing else. I said nothing else. He bought a ticket to Dacca for me, but paid no other expenses. He met me at 4 P.M. and I started the same day at 11 P.M. Nobody in plaintiff's side had met me before. Bejoy Babu and Girija Babu travelled together with me. I knew Bejoy Babu from before. I saw him at Darjeeling."

LOCATION OF BLANKET FACTORY

The circumstances, therefore, under which these witnesses were obtained are highly suspicious. When they attempted to locate the blanket factory, their evidence was most unconvincing. Srish Chandra Gupta Sarma located the blanket factory as follows: "Our *karkhana* was to the south of Kagjhora. It is 15 or 20 minutes walk from Kagjhora—one goes downhill, and after crossing the jhora uphill. It is difficult to express the distance in miles. It takes 15 or 20 minutes too. From Kagjhora to the *karkhana* there is a *rasta-kutchra* road. I can't say if it is a municipal road. It is called Sedrabong Road. The *karkhana* is in the Sedrabong Road." He also states: "The four-roomed *ghar* was known as *karkhana* (factory). Municipal tax had to be paid for it. Can't say if there was a license. The *ghar* was in Gosta Babu's name." Now, the description is consistent. The area to the south of Kagjhora is called Sedrabong. There was a road running through this area which was probably a *kutchra* road.

Mr Chatterjee has argued that there is no evidence to show that the area to the north of Kagjhora is not also loosely described as Sedrabong. This may be so, but also there is no evidence whatever to show that this area is described as Sedrabong. The blanket factory is now located to the north of Kagjhora which is on a track which could not be described as a road. It is a mere hill-track, and nobody seeing it could doubt it for a minute that it was not a municipal road. If, as the witness stated, municipal taxes had to be paid for it, we might expect the blanket factory to appear in the municipal map and the blanket factory's existence to appear in the municipal record. The municipal map does not show its existence. No

municipal records were produced to show its existence. If this witness' evidence is to be believed, the blanket factory must have been situated to the south of Kagjhora far distant from the point at which it is now located.

The next witness Girija Bhusan Roy attempted to correct the mistakes made by the earlier witness, and to do so he gave the following extraordinary evidence in examination-in-chief—"From Judge Bazar to the *karkhana* we would go by two ways—One by going down from near Burdwan Raja's house. One descends from the Cart Road leaving Burdwan Raj house on one's left. Then one goes zigzag down hill along a very bad hill path and gets into another path, more zigzag, which goes up to the Power House. On that path first comes our *karkhana*, then Leather godown and Power House, but these two I had not gone down and seen, but I had heard of them. The road aforesaid which descends from the Cart Road is called *chorabata*. One going along the *chorabata* had to cross a *jhora*. It is called Kagjhora probably which has branches. The Victoria Falls fall into the Kagjhora. The *jhora* we had to cross was a small *jhora*. The way to the *karkhana* was now down, now up, and the *karkhana* relating to the Cart Road is down hill. At the point where one gets into the zigzag road from *chorabata* were the houses of Giris Ghosh, Hemendra Babu and 2 or 3 other Bhadralogues and another, my mama's which we sold (Shewn—map K S A 1). I see the plan. The path J to J is the zigzag path I mentioned—the one to which we got from the *chorabata*. The road was then *kutchra* and in a bad condition. The road appearing in the plan (?) in the east did not exist then. It was made in 1912 or 1913 as far as I remember. The house of Maharaja Burdwan is to the S W direction of the 'new cremation ground' in the map. The grounds of the Maharaja's house began from the Cart Road—(indicates that the house is S W of new cremation ground, beyond the area in the plan). The houses of Giris Babu and others which I mentioned were somewhere here (the part marked M). The *karkhana* was somewhere here (puts his finger on part marked N).

"Another way to our *karkhana* was this—Going down the side of the Railway station one goes along the road by the school and sanitarium and by the place where washermen wash clothes. The place where the washermen washed is marked 'Laundry' in the plan. To the west to our *karkhana* were terraced fields for growing maize, potatoes and vegetables. We too had fields then cultivated by Ghaman Singh. To the east of our *karkhana* were as far as my idea goes the quarter of a Saheb, the *sasan*, a few terraced shelf-like fields, and there might have been a hut or two for watchmen watching the fields or poor men. I usually went by the road by the house of the Maharaja of Burdwan."

The learned counsel for the plaintiff argued that the evidence of Srish Chandra Gupta Sarma was in error in one respect only, that is, when the witness stated that the *karkhana* was to the south of Kagjhora, he meant, in fact, that it was the north of the *jhora*, and the learned counsel pointed out that the evidence of Girija Bhusan was confirmation of this theory. We have had the advantage of visiting this site. The route described by Girija Bhusan Roy is a route which no man in his senses would take, if he wished to go direct from the Judge's Bazar to the place at which the blanket factory is now sought to be located. The area with which we are concerned is roughly triangular in shape. To the east is the Cart Road. From a point near the Cart Road to the north-east there runs a deep *jhora* known as Bryngwyn *Jhora*, from a point to the south-east runs another deep big *jhora* known as Kagjhora. These two *jhoras* meet far below the cremation ground.

The Cart Road, the Bryngwyn Jhora and Kagjhora form a triangle. Inside this triangle are located the old cremation ground, the new cremation ground and the place at which it is now sought to locate the blanket factory.

The house of Maharaja of Burdwan is to the south of Kagjhora. If the route described by Girija Bhusan Roy were followed, then in going from a point situated half way along the base of the triangle to a point within the triangle, the witnesses first travelled along the base of the triangle to a point far outside the triangle, and then made their way back across one of the sides thus this way, at least twice as long as the direct route from the Judge's Bazar to the place where the factory is now located and infinitely more difficult. I cannot believe that any man in his senses would go by this route. I am satisfied that the evidence on this point given by Girija Bhusan Roy is false evidence given with intent to reconcile the evidence of Srish Chandra Gupta Sarma with the evidence of the sannyasi Gopal Das. Girija Bhusan Roy contradicted Srish Chandra Gupta Sarma on the question whether the site was within the municipal boundaries. Srish Chandra Gupta Sarma said that municipal tax was paid for the *karkhana*. Girija Bhusan says firmly that it was outside the municipal land and that it was situated within the lands of the Maharaja of Burdwan. One officer of the Burdwan Raj Estate was cited as a witness by the defendants, and he deposed after reference to the papers of the Burdwan Raj that the Maharaja of Burdwan had no land at that time or since in the locality in which it is now sought to locate the blanket factory. We have been asked to disbelieve this witness, but no attempt has been made to prove affirmatively that the Maharaja of Burdwan had in fact any land, and I see no reason for supposing the evidence on the subject is unreliable. I am satisfied that these people had no knowledge of any blanket factory at the place at which it is now sought to locate it, and I have very grave doubt whether any blanket factory ever existed there. I regard the evidence of these three witnesses offered in corroboration of the evidence of the sannyasi Gopal Das as clearly false evidence. It has been argued that Gopal Das has not broken down in cross-examination and that he has given a consistent story and that, therefore, there is no reason to disbelieve him. To give a consistent story is not difficult, particularly when there is no other witness with whose version there must be agreement. A breakdown over the topography of the cremation ground could be avoided by taking the witness to Darjeeling before putting him into the witness box, and it is obvious that the learned trial judge suspected that this precaution had been taken.

REASONS FOR REJECTING DARSAN DAS' EVIDENCE

The reasons for rejecting the evidence of this witness, apart from the apparent absurdity of the story he tells, are these —

- (a) The circumstances in which he was put forward suggest that he was not one of the men named by plaintiff as the rescuers.
- (b) When he was in Jaidebpur a year or two after the plaintiff's arrival, he heard the story of the plaintiff from relatives of Ramendra Narayan Roy and was asked whether he had any personal knowledge of the matter. He then said frankly that he knew nothing about it. The explanation offered for this conduct is singularly unconvincing.
- (c) He asserted that he and his companions sheltered in a cave which was in fact non-existent.

- (d) He admitted in effect that if the cave had been there, they would not have sheltered in it
- (e) The violent storm which is supposed to have driven away the funeral party did not occur
- (f) The expert evidence is that if it had occurred, it would not have revived the 'corpse'.
- (g) The alleged conduct of the rescuers in fleeing with the rescued man was so unreasonable and unnatural, that the witness could not understand it himself
- (h) They took the body to a blanket factory which certainly did not exist at the place where the rescuer sought to locate it

STORY OF RESCUE A FALSE ONE

On a consideration of the evidence offered in support of the rescue of the plaintiff I am satisfied that the story given is a false story and that no rescue was effected in the manner described by these witnesses. It is interesting to note that the learned trial judge was not really impressed with this evidence, for he says with reference to Gopal Das' evidence that "his account reads like a fairy tale, and if the plaintiff needed it to establish his identity, he would fail, for it can no more be found on this testimony than it can be found upon his testimony that he is the Kumar."

THE MORNING CREMATION

The next question for our consideration is the evidence with regard to the morning cremation. In this connection it should be remembered that it is an admitted fact that a body was taken out from "Step Aside" on the morning of May the 9th and that body was burnt to ashes. The plaintiff alleged that the body was brought out from a lower room, that it was kept covered from head to foot so that nobody could see it, that it was taken to the cremation ground with a lot of unnecessary display, and that at the cremation ground it was burnt without any of the ordinary Hindu rites being observed. It was alleged that the body was not washed, that no *mukhagni* was performed, that no ghee was smeared, that the body was still covered with the original sheet and that the body was burnt without any *mantras* being recited and without any of the rites which ordinarily attend a Hindu funeral.

On the other hand, the defendants alleged that the body was the body of Ramendra Narayan Roy, that it was brought down from an upper room in "Step Aside", that at the time when it was brought out of the house it was placed on a *khat*, that the body was exposed so that everybody might see it, that it was then carried in procession to the cremation ground where the ordinary rites were performed, that the body was washed and smeared with ghee, that *mantras* were recited and that *mukhagni* was performed with due ceremony.

To establish his version, the plaintiff examined 12 witnesses

DR. PRAN KRISHNA ACHARYYA'S EVIDENCE FOR PLAINTIFF

Of these, one, namely, Dr Pran Krishna Acharyya, is not a witness to the procession. He was merely a witness to the fact that he visited "Step Aside" on the morning of May the 9th, in order to see the body. Of the remaining 11 witnesses, four are supposed to have accompanied the body to the cremation ground and to have been present during the cremation. The remaining witnesses deposed that they saw the body pass in procession. The evidence of these seven witnesses is of no great importance and need not be considered in detail. But the evidence of Dr Pran Krishna Acharyya and the evidence of the four witnesses who accompanied the body to the cremation ground requires careful consideration. Dr Pran Krishna Acharyya deposed on commission on 27th December, 1930. His evidence is as follows: "I have no personal knowledge whether he is alive or dead. I did not get any authorised call for his treatment. But a nurse called me in. At that time he was either dead or dying. The said nurse called me over there, saying, 'Please come once and see.' But I cannot say anything positively now as to what she said regarding the fact as to whether he was dead or was dying. Then I went to the house (known as) 'Step Aside'. I was in the said house (known as) 'Step Aside' that the Kumar used to stay. I was staying at the premises No 3 Mall Villa. There is no direct route, but if one goes straight, it would be about 100 yards. It takes about 5 minutes to go there from my house. It was about 6 o'clock in the morning, when I went to the 'Step Aside'. It was most probably in the month of May. I well remember that it was in the month of May that the incident took place.

"Q—Did you see him?"

A—It is very difficult to say. I saw there a dead body in covered state. I shall not be able to say whose dead body it was. I tried to do, what it was the duty of a doctor to do, that is, to ascertain whether the same was a dead body or not. I tried to examine the heart with stethoscope, and on my going near the dead body to examine the heart after removing the cover from it, the people who were there said, 'This is the dead body of a Hindu and you are a Brahmo, so please do not touch this dead body.' I do not know the people who asked me not to examine, nor did I take any information about them. I do not know the brother-in-law (wife's brother) of the second Kumar. The dead body was completely covered. I distinctly remember that I could not see any portion of the body. I cannot say whether it could be seen or not, if observed minutely. But so far as I remember the dead body was covered. The dead body was on a bedstead. This is my impression.

Q—Save and except seeing it covered with a clothing, do you remember to have noticed any other thing?

A—I do not remember whether I noticed any other thing or not. Even after seeing the said dead body I remained at Darjeeling for some days. To my personal knowledge, I know nothing as to whether the said dead body was cremated or not. So far as I remember, I did not hear anything as to whether the dead body was cremated or not, while I remained at Darjeeling. Nobody asked for a death certificate from me."

ANSWERS TO LINDSAY

It happens that this gentleman had given answers to a questionnaire which had been sent to him by J H Lindsay in the year 1921. On the 13th August, 1921, J H Lindsay wrote to Dr Pran Krishna Acharyya as follows "Dear Sir, A sannyasi has appeared here who says he is the second Kumar of Bhowal, who died at Darjeeling on the 8th May, 1909. The statements of all persons who were at Darjeeling at that time are being recorded. I understand you were there at that time. Will you kindly record answers to the undermentioned questions and send the statements to me at an early date? Yours sincerely, J H Lindsay, Collector, Dacca", and that letter included a questionnaire. On the 24th August, 1921, Dr Pran Krishna Acharyya sent an answering letter, and in that letter answered the questions *scrutim*.

"Q 1—Were you present in Darjeeling in May, 1909?

A. 1.—Yes

Q 2—If so, do you remember the death of the second Kumar of Bhowal—Kumar Ramendra Narayan Roy?

A 2—Yes

Q 3—Were you present at the death or with the funeral procession or at the cremation of the said Kumar?

A 3—I was present at "Step Aside", the house of the Kumar, a few minutes after death. I was not with the funeral procession nor at the cremation.

Q. 4—Did you know the Kumar before? If not, did you see the body after death? Please give a description of the body as far as possible.

A 4—No. Yes. I have altogether forgotten his features.

Q 5—Can you say when the funeral procession started from the house of the Kumar? When did the cremation end? Which cremation ground was used and the route followed by the procession?

A 5—No. No. No.

Q. 6—Was there any rain or storm during the procession or the cremation?

A 6—Cannot say.

Q 7—If the cremation was in the morning, can you remember if there was any rain or storm on the previous night?

A 7—No.

Q 8—Can you remember the name, with address, if possible, of any person who, to your knowledge, was present either at the death or with the funeral procession or at the cremation?

A 8—I cannot say who was present at death. I saw sons of Mr M N Banerjee, Government Pleader, making arrangements for cremation.

Q 9—Can you remember any of the facts connected with the illness, death and cremation of the second Kumar?

A 9—Though I was the first medical man who arrived immediately after death, the relatives did not want to know from me if life was really extinct I remember this as it appeared to me a little strange "

For convenience I have amalgamated the questionnaire and the answers, placing each answer beneath the appropriate question In view of his evidence in court, the previous statement of this witness is of the greatest importance It cannot be suggested that Dr Acharyya was misled by the form of the questions put to him, nor that he was induced by the manner in which he was questioned to give incorrect answers His answers were given in a letter written by himself in the quiet of his own study, presumably after careful consideration of the several questions Dr Pran Krishna Acharyya was a gentleman of undoubted probity No body has suggested for one moment that he was capable of giving false evidence There can be no doubt whatever that he answered the questions as truthfully as he could, and also that his evidence in court was honestly given and was believed by him to be true

GLARING CONTRADICTIONS IN EVIDENCE

Question 4 and its answers are very interesting Therein he clearly stated that he saw the body after death, but had forgotten the features It is impossible to reconcile that statement with his evidence in court (referred to above) where he says, "I saw there a dead body in covered state I distinctly remember that I could not see any portion of the body"

The answer to the eighth question is also interesting It is clear that in 1921 his recollection was that he saw arrangements being made for the cremation, and that he saw persons making those arrangements whom he either knew or was subsequently informed to be the sons of Mr M N Banerjee, Government Pleader When he was cross-examined with regard to this statement, the following questions and answers were given

"Q—I want to refresh your memory Do you remember that the sons of Mr Banerjee were making arrangements for cremation of the dead body?

A—At the first point I did not know the sons of Mr Banerjee At the second point I did not notice any cremation arrangements "

And later he says, "Even after my attention is drawn to my reply No 8 to the letter, *Ex A*, I think that I did not see the sons of Mr M N Banerjee at that time I did not know them then nor did I see them—I think this to be so I do not think that it was right for me to write 'saw' in the said 'answer' of mine There is in the question 'to your knowledge' I came to hear later on that they were there I wrote 'saw' for that reason " It seems to me clear that this witness had an entirely different recollection of the facts in 1921 from his recollection in the year 1930, and his evidence shows that even with a witness whose honesty is above suspicion, there may occur contradictions of the most glaring description In other words, when witnesses are referring to an event of the distant past, the most glaring contradictions are still consistent with absolute honesty But when a witness's recollection changes so completely as that of this witness, it is impossible to attach much value to that recollection

The learned counsel for the plaintiff has relied upon the evidence of Dr Pran Krishna Acharyya for two purposes, *viz*, firstly, to establish that the body which was taken out on May the 9th was kept in a room downstairs at "Step Aside", thus contradicting the defence witnesses on the point, and secondly, it is suggested that Dr Pran Krishna Acharyya was called in as a doctor not to help in the cremation, but with the object of securing from him a death certificate, if he was prepared to give one without examination, and with the object of obtaining his evidence to show that actually a dead body was taken out from "Step Aside" on that morning. Dr Pran Krishna has no clear recollection of what message was given to him. All that he remembers was that he was called in by a nurse to see a person who was either dying or dead, and that when he approached the dead body he was not allowed to touch it because he was a Brahmo, he was so annoyed at this treatment, that he left the house, and he remembers nothing more. His evidence does not indicate what was the message given to him. It is perfectly clear that he could not remember whether he was told that Ramendra Narayan Roy was alive or dead. He was not told whether the patient had died recently or died some time ago. At one time we were under the impression that the plaintiff's case was that the person calling in Dr Pran Krishna Acharyya was the town nurse Jagat Mohini. Jagat Mohini who was examined as a defence witness denied having gone to call Dr Pran Krishna Acharyya that morning. Ultimately, the learned counsel for plaintiff stated clearly that it was not his case that Jagat Mohini had gone to call Dr Pran Krishna Acharyya, but it was the other nurse who was then in attendance and who had been called in the previous day to attend Ramendra Narayan Roy. Jagat Mohini was a Bengalee Hindu lady. The other nurse was a hill woman. She was not a Bengalee, and whether she was a Hindu is by no means clear. It is impossible, therefore, to draw any conclusion from the statement made by Jagat Mohini when she called such witnesses as Basanta Kumar Mukherjee and Khetra Nath Mukherjee, as to the message which was given by the other nurse to Dr Pran Krishna Acharyya. We have no knowledge at all of the message, and we are not justified in speculating as to its nature.

PROBABILITY OF HIS FINDING BODY DOWNSTAIRS

It has been contended that Dr Pran Krishna Acharyya found the body in a room downstairs. Dr Pran Krishna does not say so. Dr Pran Krishna does not say where he found the body. The only justification for thinking he found the body in a room downstairs is that he says that he went to "Step Aside" somewhere about 6 in the morning. According to the defence case the body was then inside the house. It is also the defence case that until the body was brought downstairs Bibhabati remained in the room and clasped the body of her dead husband. As Bibhabati did not see Dr Pran Krishna and as Dr Pran Krishna did not see Bibhabati, it is argued that the body could not have been upstairs as alleged, and if it was downstairs, it must have been in a room on the ground floor. I am not convinced by this argument. As I have pointed out, Dr Pran Krishna has no clear recollection of anything concerning this visit except that he went there, that he was annoyed at not being allowed to touch the body being a Brahmo, and that he left. In the circumstances I see no reason to assume that he found the body in a downstairs room. If, in fact, he found the body downstairs, if in fact he found that funeral arrangements were being made, it would seem that the body must have been not inside the house but in the compound. In my opinion, Dr Pran Krishna's

evidence does not justify the conclusion that the body was in a downstairs room

PURPOSE OF HIS VISIT

It has been further contended that Dr Pran Krishna being a Brahmo could not have been called to assist at the cremation, and he must have been called in in his capacity as a medical man. It appears that a number of people were sent out to get assistance in carrying the body to the cremation ground. There is nothing to show that the nurse who, in fact, went to call Dr Pran Krishna, knew who he was. I can see no reason for supposing, in the absence of all knowledge as to what message the nurse gave to Dr Pran Krishna, that Dr Pran Krishna was called in for any other purpose than to assist in the cremation. I see no reason to assume that the person who called him knew that he was a Brahmo, and from the attendant circumstances I am unable to believe that he was called in in order to give a certificate without seeing the body. The suggestion seems to me fantastic in the extreme, and I believe that in all probability through mistake he was called merely to assist in carrying the body to the cremation ground.

PLAINTIFF'S WITNESSES OF MORNING CREMATION

The four witnesses who deposed to having accompanied the body to the cremation ground on May the 9th are Ram Sing Subha, Khetra Nath Mukherjee, Basanta Kumar Mukherjee and Nalini Kanta Chakravarty. These witnesses have deposed in court, and they have supported the plaintiff's case to the effect that the body was taken covered up, that no body had an opportunity of seeing the body from the time it was brought out of the house at "Step Aside" to the time it was burnt, that no religious rites were performed, that no *mantras* were recited, and that the body was still covered when being burnt with the result that no opportunity was given to the funeral party to see whose body it was.

RECORDING OF PREVIOUS STATEMENTS AT DARJEELING

Three of these persons made statements before a magistrate in the year 1921. The learned trial judge has conceded that the statement of Nalini Kanta Chakravarty in 1921 was essentially different from his evidence in court, and has come to the conclusion that Nalini Kanta's evidence cannot be accepted. But he has come to the conclusion that if the truth were known as to the manner in which the previous statement was obtained, in all probability the apparent discrepancies might be reconciled.

With regard to the previous statements of Khetra Nath Mukherjee and Basanta Kumar Mukherjee, the learned trial judge has said that he finds no material difference between the statements in 1921 and the statements given in this court. I am unable to understand this finding of the learned trial judge. It seems to me that the statements of these two witnesses differ from their previous statements in very material particulars, as I shall show presently. But before doing so, it is desirable to see how these previous statements were taken and to deal with the criticisms generally made regarding the taking of the previous statements.

It appears that after the plaintiff had arrived at Dacca and put forward his claim a report was submitted to the Board of Revenue by the Collector and was taken by the Government Pleader, Sasanka Coomar Ghosh, in person to Calcutta. Sasanka Coomar Ghosh met Satyendranath Banerjee in Calcutta, and the two of them went to Darjeeling and consulted the Member of the Board there. After that consultation, at the request of J H Lindsay, Collector of Dacca, a magistrate of Darjeeling was directed to take the statements of certain witnesses. He took the statements of Khetra Nath Mukherjee, Basanta Kumar Mukherjee and Nalini Kanta Chakravarty and others. The suggestion has continually been made that the manner in which these statements were taken was such that the witnesses were misled, that if the questions had been properly put and if the witnesses had been properly allowed to answer them, they would have given a proper version. The learned trial judge has accepted this argument. It was pointed out in the lower court that when S N Banerjee (Satyendranath Banerjee) went to Darjeeling, he was accompanied by a neighbour who happens to be a member of the Bar and who, as it happens, is a relative of the Deputy Magistrate who was ultimately appointed by the Deputy Commissioner of Darjeeling to take the statements of certain witnesses. The suggestion was clearly made in the lower court that this Barrister friend was taken for the purpose of influencing the Magistrate. It seems to me from the judgment of the learned trial judge that this suggestion was accepted by him. The suggestion was dropped when argument was placed before us, and it was conceded by the learned counsel for the plaintiff that no such motive could have operated on the mind of Satyendranath Banerjee in taking that Barrister to Darjeeling.

INSTRUCTIONS FROM SECRETARY, BOARD OF REVENUE

Our attention was drawn to a letter written by the Secretary of the Board of Revenue to the Deputy Commissioner of Darjeeling in which a request was made that the statements of persons named therein might be recorded by the Deputy Collector of Darjeeling. The names of the persons to be examined and a description headed 'The Story of the Sadhu', and lastly, the questions to be put to the witnesses are to be found in *Ex 443*. The letter and its enclosures are as follows.

Ex 443

"My dear Goode,

In continuation (*sic*) with the appearance of a sadhu at Jaidebpur in the district of Dacca, posing himself as the second Kumar of Bhowal, I am directed by Mr Lees to write to you to have the statements of the persons named in the accompanying list recorded by Mr Ray, Deputy Collector in Darjeeling.

I send you also a paper containing the story of the sadhu as well as a list of interrogatories to be put to the witnesses in this connection.

Yours sincerely,

M L,

Serial No
in file

- 1 Babu Satcori Bose, Military Secy 's Office, Darjeeling
- 2 Babu Mohit Chandra Roy, Do
- 3 Jnanendra Nath Sur, Private Secy 's Office
- 4 Babu Panchanan Maitra, Rev Deptt
- 5 Babu Kanai Ram Mukherjee, General Dept
- 6 Rai Sahib Hiralal Dutt, Military Secy 's Office
- 7 Babu Amrita Lal Mukherjee, P S E 's Office
- 8 Babu Hem Chandra Ganguli, P W Dept

The above is the list of persons whose statements* have to be recorded in connection with the Bhowal sadhu. They are all of the Secretariat and are now in Darjeeling.

* The questions to be put will be found in the paper below

Write to D C, asking
for record of these
statements by Mr Ray,
Dy Collector

SASANKA COOMAR GHOSH,
Government Pleader,
Dacca, 3-6-21

Illegible
4-6

THE STORY OF THE SADHU

The sadhu says that he is the second Kumar of Bhowal—Kumar Ramendra Narayan Roy. His story is that on the midnight of the 8th of May, 1909, the doctors thought that he was dead and declared him to be so. The body was then removed to the burning ground where it was placed on the funeral pyre and before it was set on fire, heavy storms and rain came on which drove away the attendants, that the rains subsiding the attendants returned to the burning ground but found that the body had gone, they, however, set fire to the wood and returned home with the story that the dead body of the Kumar had been cremated. The story further is that when the attendants had run away, a sannyasi who was close by came to the funeral pyre, perceived that the life was not extinct, removed the body to his quarters and by the application of some charm the body was brought back to life.

The above story is considered absurd and untrue, and it is necessary to obtain the statements of persons (Bengalees) who were present in Darjeeling then to ascertain the real state of things. Some interrogatories are attached herewith indicating the line in which the witnesses are to be questioned. The Kumar was a man of very fair complexion, of stout build, of strong physique, with brownish

hair He was 27 years of age when he died in Darjeeling in a house called 'Step Aside' below the Mall There were with him at the time his wife, her brother, a few officers and some menial servants The rainfall report of the time shows that there was no rain either on the 8th or on the 9th in Darjeeling

QUESTIONS

- 1 (a) Did you know the second Kumar of Bhowal?
 - (b) Did you see the Kumar in life?
 - 2 Were you present at the death or with funeral procession or at the cremation of the body of the Kumar?
 - 3 Did you see the dead body? Give a description of the dead body as far as you can recollect—what was the complexion, was he a thin or a stout man? Can you remember the colour of his hair, and any other description that you can remember?
 - 4 What was the weather like during the cremation—was it fair or was it raining?
 - 5 Were you present till the end of the cremation—was the body completely burnt?
 - 6 Can you remember any incident either at the house before the procession started or during the procession or during the cremation?
 - 7 Was anything done during the procession?
- (N B Whole rupees and small bits of coin were scattered and given to the poor during the procession)"

"STORY OF THE SADHU"

It has been suggested that the object of including in this letter the story of the sadhu was that it might be communicated to the witnesses in order that their attention should be directed to the morning cremation, and their minds should not be allowed to think of anything before midnight On consideration of this letter the learned trial judge has observed as follows "It was never the case of the plaintiff—nobody had ever suggested it—that he had died at midnight, or that he had died, but was revived by a charm, or that anybody had burnt the wood without the body His case, as it is, and *prima facie*, is absurd enough, but if the Note is for the information of the witnesses—it is difficult to see for what else it was—it looks as though midnight as common ground would, it was expected, keep the mind from jerking back to anything behind it, and carry it straight on to the morning procession by the coins then scattered, stifling all stirring of memory, as regards the rain, by the rain record "

It is perfectly true that the plaintiff has never made out a case that he was supposed to have died at midnight But the learned trial judge has overlooked the fact that in the year 1921 the plaintiff had not made out any case whatever regarding the events at Darjeeling He had observed a most remarkable reticence He had given no explanation of those events, or regarding his supposed rescue at Darjeeling His followers and supporters had not been equally reticent They had been publishing versions of the Darjeeling incident broadcast Two of the pamphlets issued by them have been placed before us, and from these pamphlets it is obvious that the

learned trial judge was wrong in saying that nobody had ever suggested that they had burned the wood without the body or that he was revived by a charm. In the pamphlet entitled "*Bhowaler Katha O Nabim Sannyasi*" (ভাঙালের কথা ও নবীন সন্ন্যাসী) occurs the explanation "When the rain and storm ceased they on coming back to the cremation ground could not find the dead body of the Kumar any more. Thereafter it is said they went away setting the empty pyre on fire", and in the pamphlet, "*Fakir Bcshe Praner Raja*" (ফকির বেশে প্রণের রাজা) occur the words "Well arranged pyre is there, the anxiety is great, setting fire to the empty pyre, say 'Hari', 'Hari' * * * * The Kumar came to senses by the influence of reviving verses and saw the great pious man by opening his eyes"

NO ATTEMPT TO INFLUENCE WITNESSES

Nobody has attempted during the proceedings in court to make the plaintiff responsible for this statement of the case. But it should be remembered that in 1921 when the letter (*Exhibit 443*) was written, the authorities had to depend on statements such as those contained in the pamphlets referred to above, in order to ascertain what was the case of the plaintiff. The fact, therefore, that in the story of the sadhu the authorities put forward a case which the plaintiff disowns is no indication that that story was put forward dishonestly, or was not believed by the authorities to be the story on which the sadhu relied. It seems to me that there is no justification for the view that the story of the sadhu contained in *Ex 443* was a deliberate perversion of what the authorities believed to be the plaintiff's case. As for the suggestion that the note was for the information of the witnesses, it seems to me that this is equally unjustifiable. With due respect to the learned trial judge, it seems to me to be an act of common prudence to supply the person upon whom the duty of examining witnesses is thrown, with a statement of the case according to both parties in order that he may frame his questions intelligently and appreciate the answers. The fact that the case of the sadhu as it was understood by the authorities was set out in this letter does not justify the inference that that story was to be shown to the witnesses, nor that witnesses were to be deliberately misled in order that they might forget the truth. In the course of the argument it has been suggested that as Satyendranath Banerjee and Sasanka Ghosh, Government Pleader of Dacca, were in Darjeeling at the time Mr N K Ray, Deputy Magistrate, took the statements of the witnesses, these gentlemen must have had some part in the proceedings and have influenced the witnesses who made the statements. No definite misconduct on their part is alleged. There has been an under-current of suggestion either that they were present during the examination of the witnesses, or that the questions were put not merely in leading, but in misleading forms, or that these gentlemen took some other action as a result of which the witnesses were induced to omit all references to facts within their knowledge. This argument is wholly unconvincing.

DISCREPANT EVIDENCE IN COURT

The three witnesses whose statements were taken in 1921 by Mr N K Ray have been examined on behalf of the plaintiff. They have given evidence in court which is materially different from their statements as recorded by Mr N K Ray. They have offered explanations of the difference between the statements in 1921 and their evidence in court. But at no stage did these witnesses attempt to explain the difference by ascribing misconduct to

Satyendranath Banerjee or to Sasanka Coomar Ghosh. If there were any truth in the suggestion that Satyendranath Banerjee had seen these witnesses or deceived these witnesses, or in the suggestion that Sasanka Coomar Ghosh had a hand in examining the witnesses and put misleading questions, the witnesses could have said so on oath. They did not do so, and I am satisfied that we have no justification whatever for thinking that the statements of these witnesses recorded in 1921 were obtained by practising any deceit on them, or by questioning them in a leading form in such a way as to induce them to hide the truth. I am satisfied that the statements made by these witnesses in 1921 were as honestly made as those witnesses were capable of making. Such being the case, it is desirable to examine the statements of these witnesses made in 1921 and compare them with the evidence of the same witnesses taken in court in the present case.

KHETRA NATH MUKHERJEE'S EVIDENCE AND PREVIOUS STATEMENT COMPARED

The first of these three witnesses to be examined in 1921 was Khetra Nath Mukherjee who was then Head Bill Clerk of the Darjeeling Municipal Office. He has since retired from service and adopted *sannyas*, and he now calls himself Swami Onkarananda Giri. He deposed in court to the effect that one morning in May, 1909 Jagat Mohini, the nurse of the Victoria Hospital, came to the mess in which he was living and told him that Ramendra Narayan Roy had died on the previous night, and requested him to come and help in the cremation, and that, accordingly, he had gone to "Step Aside" and had found a body wholly covered up being brought out and placed on a *charpoy*. He got the impression that the body was that of a tall fat man. He stated further that the body was carried to the cremation ground in procession and that fried rice and rupees were scattered on the way. He added that at the cremation ground the body was placed on the pyre still wholly covered, that neither the face nor any part of the body could be seen, that not a single Hindu rite was observed, not even a *pinda* (funeral cake) was offered, and that the body was burnt to ashes. It is interesting to compare this with his statement recorded in 1921. That statement reads as follows: "I have been at Darjeeling since 1891. Probably in 1909 Jagat Mohini Das, a nurse of the Victoria Hospital, informed me of the death of a Kumar of the Bhowal estate overnight. This was early in the morning probably in this season. I was asked by the nurse to attend the funeral of the Kumar as a Brahmin. At about 6 or 7 A.M. I went to the house named "Step Aside", where the death of the Kumar was said to have occurred. On my arrival I found the dead body being brought out of the house. The body was that of a stout, strong and fair-complexioned man. We then carried the corpse to the cremation ground here forming a procession. Whole rupees, pice, *khai*, etc., were scattered by the Kumar's people including his brother-in-law when the procession passed. A Madras gentleman was also among the procession as the Kumar's attendant. After the conveyance of the dead body, Nathu Dome was about to take away the apparel of the Kumar when a Kumar's man wanted to assail the Dome. I interposed, but was told by the assailant that the dead body must not be touched by a Dome as it belonged to the Kumar of Bhowal. At my request the gentleman desisted. It was he who set fire to the face of the deceased. The corpse was then burnt to ashes in our presence with fire wood, ghee, etc., set on fire. The weather was quite fair during the cremation. There

was altogether no rain or storm. That day a *sradh* ceremony came off at the house of the Raja of Kakina at Kurseong. I had been invited, but could not attend there owing to my detention till the cremation was fully over in the afternoon of that day. The Kumar's brother-in-law and many others attended the cremation. The brother-in-law had a brown overcoat on and told me that the Kumar's attendants who were present would get out of employ owing to the demise of the Kumar."

MATERIAL DIFFERENCES

From that statement it appears that he then remembered that the body was that of a stout, strong and fair-complexioned man. In that statement he describes the performance of the *mukhagni* ceremony, and he mentions such an insignificant detail as the overcoat worn by the brother-in-law of the deceased and the statement of that brother-in-law that all the Kumar's attendants who were present there would lose their service owing to the death of the Kumar. The learned trial judge sees no material difference between this statement and the evidence in court. To my mind the material differences are these. There is no suggestion in the statement recorded in 1921 that there was anything unusual in this particular cremation. There is a clear indication that he found the dead body being brought out and that he saw the body at that stage. There is no suggestion that the body was covered up in an unusual manner. There is no suggestion that no religious rites were performed.

In the circumstances, to describe that statement as not differing in any material respect from the present statement seems to me incorrect. In view of the evidence given by Dr. Pran Krishna Acharyya I should have hesitated to describe the evidence of this witness in court as deliberately incorrect. The mere fact that his present recollection is different from his recollection in 1921 would not of itself indicate that on one occasion or the other he was making a deliberately false statement. But the explanation given by this witness regarding the discrepancies in his previous statement seems to me to indicate clearly that a false explanation was provided for him, and that he willingly and deliberately accepted that false explanation. For instance, in his examination-in-chief, after describing how he got the impression that the body on the *charpoy* was that of a man taller than himself, he added "When the body was placed on the *chita* (funeral pyre), the cloth covering the body moved exposing this part of the body (shows ribs a little below the left arm-pit). The complexion of that part was *ফস্ফিমন* (fairish)." In cross-examination he was shown the previous statement and questioned with regard to that. He answered "At the 'Step Aside' I did not see the complexion of the body." Question "Why did you say that?" Answer "I remember now that I had not seen the complexion, but I must have said I did, seeing my signature occurs there." The witness was re-examined, and in re-examination the following occurs "Question—You said you saw a part of the dead body at the *sasan*. Did that give you an idea of the complexion of the man as a whole? Answer—It did—*ফস্ফি* (fair) with a yellowish shade. When I deposed before N. K. Roy I had the impression that the man was fair." This re-examination is most illuminating. I am quite prepared to believe that when strangers attend a funeral procession they pay no particular attention to the rites performed, provided that everything proceeds substantially in the way that they expect it to do. They may, in fact, pay no

attention to the features of the body exposed, and they may not care to notice what sort of a body is actually cremated. I refuse to believe that a witness after 25 years remembers such an insignificant little detail as the moving of a cloth and the exposure of a few square inches of the skin under the arm-pit, and I refuse to believe that from such accidental exposure, any person at a cremation ground immediately builds up in his mind a picture of the dead man as stout, strong and fair-complexioned. The explanation of this witness convinces me that the evidence given in court was intentionally and deliberately false.

BASANTA KUMAR MUKHERJEE EVIDENCE IN COURT

The second of these witnesses to be examined in Darjeeling was Basanta Kumar Mukherjee, then officiating Head Assistant in the Deputy Commissioner's office, Darjeeling. He was examined in court on the 17th August, 1934, as a witness for the plaintiff. He too deposed that one morning in the month of May, 1909, Jagat Mohini Das, a nurse of the Victoria Hospital, came to the place where he was living and asked him as a Brahmin to go and assist in the funeral procession of the Kumar of Bhowal. He proceeded to state that on receipt of the news he went to "Step Aside", arriving at that house at about 8 A.M., and there he found a dead body already wrapped in cloth lying on a *khat* in the yard. "The whole of the body was wrapped with cloth so that I could not see its face or any part of the body." He added that the body looked tall, not shorter than the witness, probably taller. He then stated: "We took the body of the Kumar to the *sasan*—the body which was taken there. It was placed on a partly formed *chila* (pyre)—such *chilas* are kept there. The body, wholly covered as before, was placed upon the *chila* (pyre), cloth and all. Ordinarily, the dead body of a Hindu is bathed. This corpse was not bathed. Ghee was not rubbed over it, nor was it made to put on a new cloth. The usual *pindas* (funeral cakes) offered before *mukhagni* (putting fire first on the face of a corpse in cremating it) were not offered. I have never seen any other corpse burnt in this manner—in the manner this was."

PREVIOUS STATEMENT

The statement in 1921 reads: "I have been working in the Deputy Commissioner's office since 1902. About 12 years ago I was asked by nurse Jagat Mohini of the Victoria Hospital to attend the funeral procession of the second Kumar of Bhowal. So I went to the house known as "Step Aside" at about 8 A.M. After my arrival the dead body was brought out on a cot of the house covered with a cloth. I accompanied the dead body to the cremation ground here, but stood at some distance from the funeral pyre. So I did not notice the face of the corpse to which fire was set by a young man who was found weeping bitterly. The youth rolled on the ground crying, 'Did you bring me here to set fire to your face?' An old Durwan was so much moved by mental anguish owing to the demise that he had to be forcibly restrained by 4 or 5 men from jumping into the funeral pyre to put an end to his life with the Kumar. The funeral pyre was set on fire. While it was burning I left the place, so far as I remember, leaving a large crowd on the burning ground. The weather was very fair on the day of the cremation. There was no rain or storm, during the cremation which

must have been completed by 3 P.M. that day I had no occasion to see the Kumar during his life-time. Pice, rupees, small coins, etc., were scattered during the funeral procession. I don't remember anything more particularly, except seeing a young lady said to be the Kumar's widow weeping on the roof of the portico of the house from which the dead body was taken to the burning ground." It appears in that statement that he arrived at "Step Aside" before the dead body was brought out, and further that he was prevented from seeing the face of the corpse at the cremation ground, not by the fact that the body was still covered, but by the fact that he stood at a considerable distance. In the statement in 1921 he did not say that the body was that of a tall man. He did not say that there was anything suspicious in the circumstances. He did not say that the body was covered from head to foot from the beginning to the end. He did not say that all the ordinary funeral rites were omitted. He did say that in connection with this funeral he did not remember anything more than what he had stated, except seeing a young lady said to be the Kumar's widow weeping on the roof of the portico of the house from which the dead body was taken to the burning ground. It is obvious that this statement too varies considerably from his statement in court. When cross-examined, he stated that though all the customary funeral rites invariably observed in the case of Hindu Bengalee Brahmans were not performed, still nothing in the proceedings appeared in any way suspicious to him. It may be that this witness's recollection has changed since 1921 owing to the very vigorous propaganda that has been made since the arrival of the plaintiff in Dacca. But in his evidence too there is one curious detail which suggests perjury. His evidence is that he did not see the body until it was lying on a *khat*, yet he expressed the opinion that the body looked tall, not shorter than the witness, probably taller, and the witness was 5 feet and 6 inches in height. In this connection, it is interesting to note that the plaintiff's party have throughout attempted to show that the body cremated on the morning of May the 9th was that of a man much taller than the late Ramendra Narayan Roy. If, as the witness says, he arrived at "Step Aside" at a time when the body was already lying on a *khat*, and the body was covered from head to foot so that no part of it could be seen, it is incredible that he should have formed the impression that the body was that of a man taller than himself, unless it so happened that the dead body was that of a man most exceptionally taller. Whether the witness's evidence in court is honest or otherwise, it seems to me clear that his present recollection cannot be relied upon, and his evidence is, therefore, of no assistance to the plaintiff.

NALINI KANTA CHAKRAVARTY

The third of the witnesses to be examined in 1921 was Nalini Kanta Chakravarty. The difference between the evidence of this gentleman in court and his statement in 1921 is so noticeable that even the learned trial judge was constrained to remark that the witness has been rightly discredited by his former statement. The learned trial judge adds: "The witness is gone, though the circumstances under which these statements were taken, what questions were put on the 3rd June, before the printed questionnaire had been framed, what things were put into their mouth, or what suggested as common ground, like 'the story of the sadhu' I mentioned and sent with some questions framed on the 3rd June, are not known. One thing, however, is plain. That less than 11 days after the plaintiff declared his identity

the idea had occurred to get this 'uncovering of the body' from the witnesses, and to pin them down " In my opinion, the suggestions contained in this comment are without justification. If anything was put into the mouth of the witness, the witness could have said so. He omitted to say so, and there is no evidence whatever that anything was put into his mouth. I agree with the learned trial judge that the witness is utterly discredited. But I cannot find anything from that fact to justify criticism of the opposite party.

The fourth witness for the plaintiff who deposed that he actually accompanied the funeral procession on the morning of May the 9th is Ram Sing Subbia whose evidence I have already discussed. I am satisfied that this particular witness is a person on whose testimony nobody would dream of relying. It follows, therefore, that so far as the evidence adduced by the plaintiff is concerned there is no reason whatever for supposing that the funeral on the morning of May the 9th was conducted in exceptional manner.

ALLEGED DISCREPANCIES IN DEFENCE EVIDENCE

The learned counsel for the plaintiff has drawn our attention to contradictions and discrepancies in the evidence given on behalf of the defendants with regard to the morning cremation. But he has not disputed the attendance at the cremation ceremony of most of the witnesses who have so deposed. He has not asked us to draw the conclusion that the witnesses were not present. He has merely asked us to infer from these contradictions and discrepancies that no rites or ceremonies were performed. He has pointed out that Shyamadas Banerjee deposed that there was no priest at the cremation and that one Sashi Banerjee, an accountant at Darjeeling, perhaps acted as the priest. The evidence of Birendra Chandra Banerjee and Dr Ashutosh Das Gupta does not agree with that of Shyamadas in this respect. Both of them said that *mantras* were read by Ambika Thakur, the cook, who was a member of the establishment of Ramendra Narayan Roy at Darjeeling. It appears that when Birendra Chandra Banerjee deposed in the Sripur case, he stated that the cook Ambika acted as the priest and told the *mantras*. In his evidence, in the present case, however, he asserted that two persons, Ambika Thakur and a Babu residing in Darjeeling, read the *mantras*, and Dr Ashutosh Das Gupta supported him in this respect. He stated "I distinctly remember the two *purohits* (priests). One of these I distinctly remember was our cook. His name is Ambika Thakur I think. The other priest was a *bhadralogue* resident of Darjeeling. He was a Bengalee." In the Defamation case Ashutosh Das Gupta had deposed "There was a priest. He was a Hindu. I cannot give his name. I saw him at Darjeeling before second Kumar's death. I cannot say whether the priest went to the place of cremation before or after us. (Says after) He went with us. I do not remember where I saw the priest before. I saw him for the first time at our house at Darjeeling on the day of second Kumar's death. I cannot say if the priest was an up-country man or a Bengalee."

PERFORMANCE OF RITES AND CEREMONIES

It is conceded that there was no regular professional priest present at the cremation. If anybody officiated as priest and recited the *mantras* which

were to be repeated by the person who performed the *mukhagni*, that person was a Brahmin who was not a professional priest. In the circumstances, it seems to me not unnatural that persons who were present at the cremation should have forgotten who functioned as the priest and should have given contradictory evidence on the subject. The mere fact, therefore, that some witnesses stated that the priest was Sashi Banerjee and that some witnesses stated that Ambika Thakur recited the *mantras*, does not suggest to me that either of these groups of witnesses was deliberately giving false evidence. The only suspicious part of the evidence is the attempt of Ashutosh Das Gupta and Birendra Chandra Banerjee to reconcile the two stories and to assert now that two persons functioned as priests. I believe this belated explanation is untrue. But I do not think that the contradictions regarding the identity of the person who functioned as priest indicate that any of the other witnesses were giving false evidence in the matter. With regard to the suggestion that rites and ceremonies were not performed, it should be borne in mind that Satyendranath Banerjee and other men of Ramendra Narayan Roy's party were young men less than 30 years of age and were all strangers to Darjeeling. They had sought and obtained the assistance of a number of Brahmins and other gentlemen present in Darjeeling, and these strangers had accompanied the party to the cremation ground to assist in the cremation. Many of these persons who did so assist must have been familiar with the ritual of cremation, and must have known what were the essential ceremonies and what was expected to be done on such occasions. It is virtually admitted that nobody protested at the time that there was any lack of ceremony, and that nobody interrupted and endeavoured to insist that the proceedings be carried out with more respect to the Hindu religious rites and usages, or stricter observance of Hindu rites. It seems to me unlikely that a group of Brahmins would stand quietly by, while some inexperienced young men performed a cremation ceremony in direct defiance of the customary rites and ceremonies. The fact that there was no protest from anybody and no interruption, convinces me that there must have been, if not strict observance of ceremony, still sufficient observance as to pass muster with the crowd of stranger Brahmins who assembled there. Our attention has been drawn to the evidence of Birendra Chandra Banerjee that he did not bathe before performing *mukhagni*, though he admitted that it is incumbent upon the person who performs *mukhagni* to bathe before doing so. Birendra further stated that though it is the custom in his part of the world for the person who performs *mukhagni* himself to bring water for cooking the *pinda* and to do so after first bathing, he did not bathe, nor did he bring water for the purpose of cooking the *pinda*. We are asked to draw the inference that there was no cooking of *pinda* and no observance of any ceremony at the cremation. This sort of evidence by Birendra Chandra Banerjee given 26 years after the event, does not, in my opinion, justify any such inference, nor does the fact that Rajendra Nath Sett, another witness for the defendants, omitted in his evidence to make any reference to the ceremonies performed, justify the inference that no ceremony was performed.

JUDGE'S REASONS FOR DISBELIEVING DEFENCE VERSION

The learned trial judge in dealing with this part of the case has come to the conclusion from certain circumstances to which reference will now be made, that the morning cremation was performed without the observance

of any ceremony. The first of the reasons given by the learned trial judge is that it is perfectly clear that not a soul had come at night after 9 P.M. to "Step Aside." He refers to the contradictory evidence of Shyamadas and Rajendra Sett as regards the time at which they received the call to go to "Step Aside" and the time at which they got there, and has pointed out that their evidence does not agree with the entry in Satyendranath Banerjee's diary under head May the 9th. I am unable to understand how this shows that the morning cremation was not properly performed. Whether these witnesses came at 1 A.M. or 3 A.M. or 6 A.M. may be a matter of dispute, but it is not disputed that in fact they went to "Step Aside" on the morning of May the 9th and accompanied the body to the cremation ground. No discrepancy as to the time at which they went to "Step Aside" can possibly indicate what took place at the cremation ground.

The second argument advanced by the learned trial judge is one which I find still more difficult to understand. It is this that "the procession in the morning was made as public as possible, pice scattered, and reversed arms, and so forth, though this sort of thing is usually done in the case of rich people who die full of years, and not in the case of sudden, strange, calamitous death of a youth, however rich." It should be remembered that apart from the widow Bibhabati and her brother, Satyendranath Banerjee, the other persons at "Step Aside" were members of the family of Ramendra Narayan Roy. They behaved throughout their stay at Darjeeling as servants of very rich men and as though Ramendra Narayan Roy was an independent prince, and it seems to me by no means strange that when his body was taken to the cremation ground, it was taken in public procession with as much show as they were capable of making.

KASISWARI DEVI AND FLINGING AWAY OF ORNAMENTS BY BIBHABATI

But the incident on which the learned judge places greatest reliance is the incident deposed to by Bibhabati Devi and other witnesses, viz., the visit of Kasiswari Devi, wife of M. N. Banerjee, to "Step Aside" on the morning of May the 9th. Bibhabati Devi's story is that during the night of the 8th the body of Ramendra Narayan Roy remained in a room upstairs, and she, Bibhabati, remained touching the body throughout the night, and that in the morning when arrangements were being made for the cremation, information was taken by Jagat Mohini, the town nurse, to many persons, and among others it was taken to the family of M. N. Banerjee. When news was received at the house of M. N. Banerjee, Kasiswari set out for "Step Aside" to comfort Bibhabati and to give what assistance was in her power, and she was followed by two of her sons. Bibhabati's case proceeds that the body was taken downstairs and was ultimately taken out of the house for cremation. Bibhabati in her grief tore off her ornaments and flung away some. Thereafter Kasiswari Devi took her to her bath-room and bathed her, and at that time the remaining ornaments were taken from the person of Bibhabati and handed over by Kasiswari Devi to the servant Bepin Behari De, who tied them in a handkerchief. Thereafter Kasiswari Devi took Bibhabati from "Step Aside" to her own house and kept her there until the cremation party returned. The learned trial judge has stated that no young girl would take off all her ornaments, and in fact would not be allowed to take off her ornaments before the cremation party returned. He stated that it is the custom that if a girl attempts to do so, other elderly

ladies restrain her and insist upon her keeping them, there being a sort of impression that until the cremation party returns, there is still some hope and the wife has not yet become a widow. There is no evidence that this is the practice. The learned judge stated that the witness Bepin Behari De admitted this custom. The actual evidence of the witness reads as follows: "To Court—When the Rani came out of the bath-room on the day following the Kumar's death, there were no ornaments on her person—might have been something on the nose—but this I do not remember. To Court—I do not know if widows are made to take off all ornaments immediately upon death. Ornaments are not kept after cremation—but I do not know." Even assuming on the strength of the learned judge's own experience, that there is such a custom as he describes, it does not necessarily follow that the custom is observed in all parts of the country and in all families. At "Step Aside" there were no elderly ladies of the family of Ramendra Narayan Roy so far as we are aware. Bibhabati certainly behaved at the time as though she were absolutely frantic with grief. It would not be surprising if she flung all of her own ornaments away in the manner described. It does not seem to me impossible that Kasiswari Devi realised that it was wiser at the time not to thwart Bibhabati, and to allow her to have her own way until the first urge of grief had subsided. To my mind, therefore, there is nothing intrinsically unreasonable in the story.

GITA DEVI'S ACCOUNT

The learned judge found confirmation for his view in the evidence of Gita Devi.

Gita Devi's evidence reads as follows: "As soon as Rani saw us after being brought by mother, she began to say weeping, 'Didi (elder sister), what is there left in me which you have come to see?' She was then weeping very bitterly, words cannot describe it. She kept on weeping saying, 'I am leaving my idol of gold in these hills.' We tried our best to console her. Mother reached her to her house when she (mother) received information that all duties in the cremation ground were over." In cross-examination she deposed: "It was immediately after the Kumar had been taken out that mother brought the Rani to our house at about 12 noon. She called us all and said, 'She is a young girl, come all of you, let us console her.' The object of my mother in bringing her to our house was that there were no women-folk at their house and a young girl was crying alone. As soon as we went there, the Rani began to cry bitterly on seeing us. She told us, 'Didi (elder sister), what have you come to see in me? I am leaving all my possession in this hill.' Saying so she began to weep bitterly. At last when she became a little appeased, mother began to ask her everything. She said, while weeping bitterly, 'A new elephant has been purchased. It has not yet been named.' When she came to our house she had no ornaments whatsoever on her person. Question—What did your mother ask her? —(Objected to) Answer—At first she said, 'You are a young girl, you have given up all ornaments in the meantime?' The Rani said, 'He never allowed me to put off anything (ornaments) from my person. But nobody to-day tells me anything.' So saying, she began to cry and lament. Mother was asking her all these things continually." The learned trial judge has expressed the opinion (with which I am in entire agreement) that this latter evidence is obviously honest and truthful evidence, and he has drawn the conclusion that since Kasiswari Devi asked Bibhabati Devi after the latter was taken

to Mr M N Banerjee's home why she had taken off her ornaments, therefore, Kasiswari Devi could not have been present at "Step Aside" when the ornaments were taken off. It seems to me that this inference is not justified. In the first place, it is doubtful whether Gita Devi now remembers exactly what conversation took place. But, even if it be assumed that the conversation recorded is exactly the conversation that occurred, it does not, in my opinion, justify the inference drawn from it. I can find nothing strange in Kasiswari Devi's assisting Bibhabati to tear off her ornaments in the first urge of grief, and still attempting to console her with such questions and conversation. I can see nothing in this evidence to justify the inference that Kasiswari Devi was not present at "Step Aside" on the morning of May the 9th.

KASISWARI DEVI'S VISIT

On the other hand, there are a number of circumstances which suggest that it is extremely probable that she went to "Step Aside". We have it admitted that Jagat Mohini, the town nurse, went on the morning of May the 9th to call people to assist at the cremation. Jagat Mohini seems to have called, among others, Basanta Kumar Mukherjee, who lives near to the home of Kasiswari Devi, and also Swami Onkarananda. It is proved by Gita Devi that Jagat Mohini had attended the former when her child was born some months before the event we are discussing, and it is further proved also by Gita Devi that Jagat Mohini remained on friendly terms with Kasiswari Devi and used to visit her from time to time. Kasiswari Devi's kindness and sympathy with people in distress was well known in Darjeeling. She was a lady who might reasonably be expected to rush to the assistance of any stranger Bengalee lady who was in trouble. Such being the case, it is only natural that Jagat Mohini when going out to call people to assist in the cremation and passing near the house of Mr M N Banerjee should call at that house and obtain assistance of Kasiswari Devi and her sons. We have further the undisputed fact that Bibhabati was taken to the house of Kasiswari Devi during the time the second cremation was being carried out. In these circumstances, it seems to me highly probable that Kasiswari Devi went to "Step Aside" and herself took Bibhabati to her home.

OMISSION OF HER NAME IN SATYENDRA'S DIARY

Our attention has been drawn in this connection to the diary of Satyendranath Banerjee under date May the 9th. In that entry there is no mention of Kasiswari Devi's presence at "Step Aside", but the fact is mentioned that her son Balen arrived to assist at the cremation. Furthermore, there is an entry in these words "Sejomama remained with Bibhabati at 'Step Aside'". It has been argued that this entry in the diary indicates that Kasiswari Devi could not have gone to "Step Aside", otherwise her name too would have occurred in the entry, and also that since Sejomama remained with Bibhabati, it follows that Kasiswari did not remain with her. I am not impressed with this argument. It seems to me clear that when the author was making this entry he was thinking wholly of the arrangements for the cremation, and he was specifying the people who assisted at the cremation so far as he could remember them, and the

reference to Sejomama is not, in my opinion, an indication that he was thinking what had happened to his sister Bibhabati, but he was explaining why Sejomama did not accompany the body to the cremation ground. It may be noted that though Bibhabati went to the house of Kasiswari Devi, this fact is not entered in the diary. The omission of Kasiswari Devi's name from the diary does not suggest to me that she was not present at "Step Aside" that morning. After careful consideration of the evidence given I see no reason to disbelieve the story of her presence. I certainly see no reason from this evidence to deduce that the morning cremation was not carried out with due observance of the religious rites and ceremonies.

NO EVIDENCE AS TO BODY BEING DOWNSTAIRS

The cross-examination of the witnesses has revealed contradictions as to the manner and time at which the body was brought downstairs at "Step Aside" and was taken out in the compound preparatory to being taken to the cremation ground. One of the witnesses, Rabin Banerjee, even suggests—though he does not definitely say so—that the body was brought down through the sweeper's path to the compound. Such contradictions, where witnesses are giving evidence 25 years after the event described, seem to me wholly natural, and it does not seem to me that the court is justified in taking statements of witnesses on separate details and building up a story contrary to the evidence in general of those witnesses. None of the witnesses examined has stated definitely that they found the body inside a room on the ground floor at "Step Aside". It is true that some witnesses have said that it was brought into a room on the ground floor, and some have said that it was brought through a room on the ground floor, but none has ever suggested that the body was kept in a room on the ground floor at any time to their knowledge. I can see nothing in the evidence to justify the conclusion that the body which was taken out for cremation on the morning of May the 9th was a body which had been kept in a downstairs room and had not been in an upper room in the house. I have stated that, in my opinion, contradictions in the evidence of these witnesses are natural, even such glaring contradictions as appear in the evidence of Rabin Banerjee, and I do not think that such contradictions justify an inference that the witnesses who made them were not present at "Step Aside" that morning, nor that they have given false evidence. But even if all those defence witnesses whose presence at "Step Aside" or at the cremation ground is disputed are left out of account, there still remain many witnesses whose presence at "Step Aside" and at the cremation ground is admitted. None of these witnesses have suggested in their evidence that there was anything extraordinary in the cremation or anything to arouse suspicion or excite comment.

RAJENDRA NATH SETT'S EVIDENCE

Of the witnesses examined, two, namely, Rajendra Nath Sett and Haran Chandra Chakladar, seem to me to be obviously honest and truthful witnesses. It is true that the learned trial judge has referred to their evidence and has rejected it. But his reasons for doing so seem to me wholly unsatisfactory. Rajendra Nath Sett is a witness of whom the

plaintiff stated in his memorial in the year 1926, "Babu Rajendra Lal is a man of high position in society. He was once the Chairman of the Bally Municipality and an Honorary Magistrate and there is no reason to disbelieve his statement." From that memorial it is clear that Rajendra Sett's presence at "Step Aside" and at the cremation was admitted. But it was stated in the memorial that Rajendra Sett was deceived into believing that the body burnt was the body of Ramendra Narayan Roy. The exact words of the memorial are "That your memorialist has very little idea of the secret enquiry made about him. But he has been lately informed by Babu Rajendra Lal Sett of Bally that the latter's statement was recorded during the Government enquiry. The said Rajendra Babu saw your memorialist recently at his Bhowanipore house and questioned him about certain incidents at Darjeeling. On hearing the answers that your memorialist gave, he recognised him at once as the Kumar whom he (Rajendra Babu) had met at Darjeeling when he used to visit his friend Satyendranath Banerjee just before your memorialist's supposed death. Babu Rajendra Lal stated that he was called to attend the cremation ground at 2 P.M. and he accompanied the party and saw a certain dead body burnt, which, he understood from Satyendra, was the dead body of the Kumar. Rajendra Babu expressed to your memorialist that he had no reason then to disbelieve the statement of Satyendra Babu, and that he had no means to speak as to the identity of the dead body during the enquiry, as it was burnt fully covered up. Babu Rajendra Lal is now at Bally, and expressed his deep regret that he made a statement as to the cremation of the Kumar simply because he had no reason to suspect foul play. It, therefore, appears from the statement of a friend of Satyendra Babu that it was not difficult for the latter to hoodwink the outsiders who attended the cremation. Babu Rajendra Lal is a man of high position in society. He was once the Chairman of the Bally Municipality and an Honorary Magistrate and there is no reason to disbelieve his statement".

Rajendra Nath Sett was examined as a witness in this case in March, 1931. He was examined on commission long before the plaintiff himself deposed in court. In his evidence he stated that the body was brought downstairs shortly after he reached "Step Aside", that he saw the dead body, and that it was the body of the person to whom he had previously been introduced as Kumar Ramendra Narayan Roy. Rajendra Sett further stated that at the cremation ground too he saw the dead body and recognised it to be that of Ramendra Narayan Roy to whom he had been introduced. During cross-examination he was questioned about the visit to the plaintiff to which reference is made in the memorial, and he deposed "I went to see him one day whom people were calling Kumar. I went to see him at Bhowanipore in one of the houses there, it might be 2 years or more from this day. Whether he lived there or not I cannot answer.

Q—Was that house on the western side of Harish Park?

A—That I cannot say.

Q—Did you put any question to him for examining him?

A—I did.

Q—What questions you put?

A—First time when I went, Dwari Babu told me through a Vakil of High Court. 'Take me to the house of Dwarik Babu'. There was a discussion with Dwarik Babu about that. He said, 'Do

you not even wish to see him once?" He said this, because I told him that whom I saw burnt to ashes with my own eyes, how could I believe that he was still alive. And out of curiosity I went to see, and the son of Dwarik Babu went with me. Going there and entering into the room I was very much 'surprised' to see one gentleman whose hair was red and eyes tawny like that of Kumar. I asked, 'Is he Kumar?' Then one of the gentlemen sitting there said, 'No, he is the nephew (sister's son)' After that he, to show whom he (Dwarik Babu's son) took me there, came. He asked me, 'Well how you are—can you recognise me?' I said, 'No, how can I recognise?' Then he told me that in order to solve your doubt if you had anything to ask me, you could do so. To this I put this question to him, 'What kind of a hat Satyen ordinarily used to wear at Darjeeling?' To this he replied, 'Please wait' Saying this he went upstairs. Coming down from upstairs, brought a cap wrapped up in a newspaper, that was a very costly cap—like that of a Gurkha cap with embroidery, perhaps gold embroidered which he showed to me after opening the wrapper. I was astonished to see that, because Satyen on wearing coat and pant used that sort of cap. He said that that was their family cap—all of us used that cap and Satyen also used that cap. Another question I put to him 'Ordinarily did you wear cloth at "Step Aside"?' He said that a silk cloth was wound up in the waist and another coloured coat like that of a sleeping suit was worn on the body. From the answer he gave, these things seemed to be similar to those I saw on the first occasion. As similar things were mentioned, so I said, 'You used to wear lungi cloth and not (ordinary) cloth' He said that they used to wear cloth in the manner of a lungi.

Q—About this did you test him?

A—Many days after I met Satya and he told me, 'Yes, he used to wear cloth in that fashion—who does not know that?' Satya laughed at it."

It is clear from this description that Rajendra Nath Sett denied the story given in the memorial. He did not say anything about telling the plaintiff that he had seen the body completely covered up. He did not say that he expressed any regret for having made a statement regarding the cremation, nor did he say that he recognised the plaintiff as Ramendra Narayan Roy. In spite of this direct contradiction of the statement made in the memorial, the plaintiff in his evidence made no attempt to prove affirmatively the truth of the statement contained in the memorial regarding Rajendra Nath Sett. The only statement in the evidence of the plaintiff in this connection is this

"I know Rajendra Sett. It is true that he saw me in Calcutta and recognised me"

It seems to me that the story given in the evidence of Rajendra Nath Sett is a probable and reasonable story. His evidence that he was astounded at the plaintiff giving correct answers to his questions and his description of his conduct in racing to Satyendranath Banerjee for an explanation seems to me so natural and so convincing that it must be true. But there is nothing in this evidence to suggest that he had, in fact, been deceived at

Darjeeling, or that he had in fact seen the cremation of a body which had been hidden from public view. His evidence in court, to my mind, merely suggests that he was taken aback at what he considered the uncanny knowledge of the plaintiff of past events, and it was not until his interview with Satyendranath Banerjee that he was able to regard that knowledge in its proper light. I can see nothing in this evidence to discredit Rajendra Nath Sett.

NO MATERIAL CONTRADICTIONS

The learned trial judge has disbelieved Rajendra Nath Sett apparently owing to contradictions between the evidence of this witness and Bejoy Kumar Mukherjee regarding the time of their arrival at "Step Aside" on the morning of May the 9th, and contradictions between their evidence and that of Satyendranath Banerjee regarding the contents of the note which they received from the latter. In his evidence Rajendra Nath Sett deposed that "one day after midnight at about 1 o'clock, the said durwan, who accompanied Satyendra Babu in his walk, having come to our place pushed the door and gave me a slip. In this it was written in English, 'Dear Mr Sett, Kumar is no more, please come with Brahmans for the last rites.' This slip was in the handwriting of Satyendra Babu." Satyendranath Banerjee deposed "I did send a man to the Sanitarium, but not in the evening. *To Court*—The man I sent was either a servant or Durwan—(adds) I sent him after Kumar had died at midnight. I sent one man. I sent him after an hour or so after Kumar's death which took place at midnight.

Q—Do you suggest you sent him at the time to the Sanitarium for men to come and take the corpse of the Kumar to the cremation ground?

A—No. I only sent a chit to give information. I did not want them to come at night—it depended on them."

The entry in Satyendranath Banerjee's diary of May the 8th reads "Sent man to the Sanitarium for men to get the corpse removed for funeral."

In other words, the diary entry supports the evidence of Rajendra Nath Sett, but contradicts the evidence of Satyendranath Banerjee. I do not think that the evidence of Satyendranath Banerjee on this point is a material contradiction. But, in any case, I do not see why the statement of Satyendranath Banerjee in this court which contradicts his own entry written at the time should be considered sufficient to discredit a witness like Rajendra Nath Sett. With regard to the time at which Rajendra Nath Sett and Bejoy Kumar Mukherjee went to "Step Aside", Rajendra Nath Sett deposed "When we reached the "Step Aside" it was almost dawn. It was not before 3 o'clock", and in cross-examination he states "At that time when it began to dawn at Darjeeling I cannot say. But there the dawn begins later than in this part of the country. It was at about 5-30 or 6 or 6-30 A.M."

Bejoy Kumar Mukherjee in cross-examination states that on receiving the news of death he went to "Step Aside" probably very early in the morning, it might be 4 or half past 4. Satyendranath Banerjee's diary of May the 9th opens with the sentence, "Sett with men from Sanitarium arrived." It has been suggested that because events between midnight of May the 8th and dawn of May the 9th have been entered by Satyendranath

Banerjee under head May the 8th in his diary, therefore, anything that is entered under head May the 9th must necessarily occur after dawn. It is, therefore, argued that the entry in Satyendranath Banerjee's diary of May the 9th proves that Rajendra Nath Sett and others from the Sanitarium had not arrived until after dawn on May the 9th.

Satyendranath Banerjee's diary was not written up at the time. It was certainly not written until 10 or 12 days after. To attach such importance to the date under which this entry is made seems to me without justification. I do not think that the fact that this entry appears under date May the 9th justifies us in coming to any conclusion on the question whether Rajendra Nath Sett and his companions arrived before dawn or after dawn. I have been unable to find any evidence on the record to justify the conclusion that Rajendra Nath Sett was giving false evidence either with regard to the message he received, or with regard to the time at which he went to "Step Aside", or in respect of the details of the cremation as he remembers them.

HARAN CHANDRA CHAKLADAR

Another witness I considered to be obviously a truthful witness is Haran Chandra Chakladar. The learned trial judge rejected his evidence for reasons set out in his judgment at pages 391-392. At page 392 of the judgment the learned trial judge observed that Haran Chandra Chakladar falsely stated that he was present at the condolence meeting which took place at the Sanitarium on May the 16th, 1909. It appears that a list of the gentlemen present at the condolence meeting was drawn up and kept in the file at the Lewis Jubilee Sanitarium. The name of Haran Chandra Chakladar is not in the list, though the learned trial judge found even a 'youngster' who attended appears there, and from this fact the learned trial judge has come to the conclusion that Haran Chandra Chakladar was not present at the meeting, and had, therefore, given false evidence when he said that he was present.

The witnesses whom the learned trial judge has held to be witnesses of truth, whose honesty could not possibly be questioned, are Hiralal Roy and Nagendranath Rakshit, two of the members of the Maitra group. Each of these witnesses has stated on oath that he was present at the condolence meeting, yet their names do not occur in the list, *Ex Z(118)*. It is obvious, therefore, that the mere fact that a gentleman's name does not occur in the list of persons who attended the condolence meeting is not a sufficient reason for holding that he was not present at that meeting.

CHAKLADAR'S STATEMENT TO LINDSAY

Haran Chandra Chakladar is one of the persons to whom in 1921 J. H. Lindsay, Collector of Dacca, sent a questionnaire. No reply was received from Haran Chandra Chakladar, and accordingly in September, 1921 Lindsay came to Calcutta and took the opportunity of calling on Haran Chandra Chakladar. He asked Haran Chandra Chakladar certain questions and obtained answers. But Haran Chandra Chakladar objected to his answers being recorded and was not prepared to give a signed statement. Consequently, J. H. Lindsay did not record the answers then and there. He waited

until he returned to his hotel and then recorded the gist of the answers as he remembered them. The record which he prepared is *Ex Z(359)* and reads as follows: "He said that he was living at the Sanitarium, Darjeeling, in May, when a man came from the house of the second Kumar of Bhowal to say that the Kumar had died and asking him and others as Brahmins to help at the cremation ceremony. This man came in the morning. Prof Chakladar went to the house and saw the body lying under a sheet, he helped to take the body to the cremation ground, and he saw the Kumar's face when the fire was applied to the dead body. He knew the Kumar from before and recognised his face when in the pyre. The body was burnt in his presence. Prof Chakladar did not wish to be called in court, so he had not given a written statement before. Babu Satyendra Banerjee was with me when our talk took place, but he personally did not know the way to the house. Prof Chakladar did not remember if there was any storm the night before the cremation ceremony." In his evidence J H Lindsay said: "Calcutta was outside my jurisdiction. As far as I recollect, I recorded that statement because this man had not sent an answer to the questionnaire sent to those whom I had learnt to be in Darjeeling at the time of the second Kumar's death, and I thought he was the sort of person whose evidence would be believed throughout Bengal whatever he said." In cross-examination he was asked: "You remember full well you sent him a questionnaire and he did not reply?" *Answer*: "Not full well, but I think in all probability he had not replied." Haran Chandra Chakladar, on the other hand, states: "No body personally or by letter asked for any statement from me before Mr Lindsay approached me."

In the statement recorded by J H Lindsay in September, 1921 occurs the sentence: "Professor Chakladar did not wish to be called in court, so he had not given a written statement before." It appears that in 1921 Haran Chandra Chakladar remembered that he had received a request from J H Lindsay, and he remembered the reason for not answering. The fact that in 1931 he had forgotten that he had received a letter from J H Lindsay does not seem to me surprising, and his statement that he had not received such a letter does not, in my opinion, justify the conclusion that he was giving false evidence.

Another reason given by the learned trial judge for disbelieving this witness is that he was unwilling to allow J H Lindsay to record his statement and was unwilling to give a written statement. He stated that he objected to doing that, as he did not like to be bound down by a written statement. The learned trial judge seems to have thought that the witness wanted to be free to alter his statement and change it to suit the circumstances. But it seems to me that this answer merely indicates timidity and does not suggest that the witness wished to remain free to alter his statement. The very explanation given by the witness seems to me an honest explanation, and not the explanation of an untruthful witness. The learned trial judge remarks further that there is untruthful evidence or falsehood in the statement of Haran Chandra Chakladar. This untruthful evidence is contained in the statement that the witness went to see Ramendra Narayan Roy 5 or 6 days before his death, as he heard that he was ill of colic and that he met Ramendra Narayan Roy on that occasion. It has been pointed out that nobody now suggests that Ramendra Narayan Roy was ill of colic 5 or 6 days before his death, and it has been argued that Haran Chandra Chakladar was attempting to bolster up a false story that Ramendra Narayan Roy was ill for 14 days before his death. Haran Chandra Chakladar was deposing 22 years after the events he was describing. Whether he went one day or

two days or five or six days before the death is a detail in which he was likely to make a mistake, and an inaccuracy of this sort seems to me too trivial to justify any comment

APPARENT CONTRADICTIONS

The learned counsel for the plaintiff has drawn our attention to an apparent contradiction between the statement in court of this witness and the statement in Lindsay's note of September, 1921. In the first place, it should be remembered that Lindsay made his note from memory and not immediately after his conversation with Haran Chandra Chakladar. It is, therefore, by no means impossible that J. H. Lindsay was inaccurate. The contradiction we are concerned with is as to the time at which Haran Chandra Chakladar saw the face of Ramendra Narayan Roy. In the statement recorded by J. H. Lindsay it appears that the witness went to the house and saw the body lying on the bed covered with a sheet, and that he did not see the face and the body until fire was applied thereto at the cremation ground. In his evidence in court the witness states that he saw the body before it was taken to the cremation ground, and also at the time of bathing it, and also at the time of performing *mukhagni*. There is indeed a contradiction if Lindsay's record of the conversation is accurate. But when we remember the contradictions occurring in the statement of a witness of admitted honesty like Dr. Pran Krishna Acharyya, it is obvious that this sort of contradiction does not indicate untruthfulness on the part of the witness.

None of the reasons mentioned by the learned trial judge or put forward by the learned counsel appearing for the plaintiff seem to me to justify rejecting the evidence of this witness. It should be remembered that both Rajendra Nath Sett and Haran Chandra Chakladar were examined on commission, and that, therefore, the appellate court is in as good a position as the trial court to estimate the value of their evidence. I am satisfied that both these witnesses are truthful witnesses. Though they are truthful, it does not necessarily follow that they are accurate in all details. But it is clear from their evidence that they were present at the cremation of the body on the morning of May the 9th, and that they remembered nothing strange about the proceedings, no striking departure from custom and no serious omission of the funeral rites and ceremonies. If there had been anything unusual in the proceedings, they would have certainly noticed them. Their evidence to my mind establishes that the cremation on the morning of May the 9th was an ordinary cremation with nothing to excite comment or to arouse suspicion.

RISKS OF TAKING A FAKED BODY TO CREMATION

If, in fact, there had been an attempt to cremate the body on the previous night, and if, in fact, that body had been lost, it seems certain that people in Darjeeling would have heard of those facts, and would have been more than usually attentive when a body was again taken out on the following morning and represented to be the body which had been lost on the previous night. In an ordinary cremation, people joining in the procession may pay little attention to the actual body. In a cremation under these circumstances those who attended the funeral were likely to pay more

attention than usual. In an ordinary cremation of a Hindu the body is necessarily exposed to the view of the people attending it, the body is bathed, it is smeared with ghee, it is then placed on the funeral pyre and fire is then applied to the face. At this stage anybody attending the funeral can, if he desires, see the body and see the face. True, the majority of people would not take the trouble to do so. They would assume that the body was the body of the man it was represented to be. But I find it difficult to believe that after the events of the previous night as described by the plaintiff's party, the members of the household at "Step Aside" would have dared to take another body to cremation and expose it to the gaze of people who were strangers to themselves. It is admitted that no attempt had been made on the night of May the 8th to select people to assist at the cremation. An appeal for help had been broadcast, any Brahmin or *bhadralogue* in Darjeeling might attend, and no attempt was made to restrict the invitation to selected people. Similarly, it is admitted that there was no attempt to restrict the invitation on the morning of May the 9th. The people at "Step Aside" could not possibly know that their invitation on May the 9th would not be received by the same people who had received it on May the 8th. They could not possibly know that the same people who had attended the cremation on the night of May the 8th would not be present at the cremation on the morning of the 9th. It seems to me almost incredible that they would have run the risk of taking any body other than that of Ramendra Narayan Roy to the cremation ground on the morning of May the 9th and expose it to public view. In criticising the evidence of the witnesses who have deposed to the morning cremation, the learned counsel for the plaintiff has pointed out again and again that the witnesses were not intimately acquainted with Ramendra Narayan Roy, and that, therefore, they were scarcely in a position to identify accurately the body that they saw. It may be that the particular witnesses examined had no very intimate knowledge of Ramendra Narayan Roy. But that is not the important question. The fact remains that Ramendra Narayan Roy had moved freely in Darjeeling for a week or 10 days before he was ill. He had been seen by many, and he was obviously a conspicuous figure. He was attended by armed followers, he and his brother-in-law were very noticeable, and he appears to have comported himself almost as an independent prince. It is certain, therefore, that many people must have seen him and noticed his features. I find it difficult to believe that the people at "Step Aside" would have risked exposing the body of another man to the public, any of whom might have seen Ramendra Narayan Roy a few days earlier and remembered his features. At the least breath of suspicion their conspiracy would have been exposed. Therefore, it seems to me that in the present case the very fact that the cremation was an ordinary cremation with nothing in it to excite suspicion is almost conclusive proof that the body burnt was the body of Ramendra Narayan Roy.

SUMMARY OF CONCLUSIONS ON DARJEELING CHAPTER

My view, therefore, on the evidence regarding the events at Darjeeling in May, 1909 may be condensed into the following ten propositions

(1) It is almost impossible to reconcile the evidence on record regarding the symptoms and treatment of Ramendra Narayan Roy and the conduct of members of his personal staff at Darjeeling with the theory that there was any conspiracy to murder him

(2) If there was no conspiracy, it follows that there was no motive on the part of the members of the household to fabricate false evidence while they were in Darjeeling.

(3) If the evidence that came into existence while the party was still at Darjeeling is not deliberately false and fabricated evidence, that evidence is conclusive that the death of Ramendra Narayan Roy occurred about midnight and the body that was burnt the next day was the body of Ramendra Narayan Roy

(4) There is no convincing evidence that the apparent death of Ramendra Narayan Roy occurred at or about dusk. The only evidence on this point which is worthy of serious consideration is the evidence of the Maitra group and of Kalidas Pal. The other circumstances of the case, and particularly the conduct of these gentlemen on May the 9th and subsequent days, indicate, in my opinion, that they are mistaken in their recollection.

(5) The weather reports indicate that there was probably no rain at all in Darjeeling on the night of May the 8th either at the cremation ground or any other place within the municipal area. But even if it be assumed that the reports are such that some rain was possible, it can be stated with certainty that there was no such violent storm and widespread rain as was described by the witnesses examined on behalf of the plaintiff.

(6) The evidence of the witnesses who said that they saw or heard of the procession to the cremation ground on the night of May the 8th is most unconvincing, and some of it is obviously false and tutored evidence.

(7) There was no opportunity so far as can be seen for Satyendranath Banerjee or his companions to get a dead body in the middle of the night for the purpose of a second cremation. There was no motive for doing so, and there was no reason why they should take such a body back to "Step Aside."

(8) With regard to the story of the rescue, there is very good reason for believing that the witness Gopal Das is not the Darsan Das mentioned by the plaintiff as one of his rescuers, and the actual story of the rescue, besides being intrinsically improbable, is an obvious after-thought.

(9) The morning cremation is an admitted fact. The evidence on record establishes beyond all possibility of doubt that the morning cremation was an ordinary cremation with nothing to evoke comment or arouse suspicion.

(10) The body cremated on the morning of May the 9th was exposed to the public view, and it is, therefore, incredible that it would have been the body of any other person than Ramendra Narayan Roy.

These ten propositions, to my mind, establish almost with certainty that Ramendra Narayan Roy died in Darjeeling at midnight of May the 8th, 1909, and was cremated on the morning of May the 9th.

If, however, the one chance in a million occurred and Ramendra Narayan Roy was rescued, the following questions arise:

What was he doing between May, 1909 and his appearance in Jaidehpur in April, 1921?

Is there any evidence to show where he was, and what he was doing?

Is there any good and sufficient explanation for his failure to communicate with his relatives and friends and his failure to return home?

These questions require answers and lead us to an examination of the evidence regarding the period between the alleged departure of the plaintiff from Darjeeling in 1909 and his appearance in Dacca in the year 1921

INTERVENING YEARS—1

The learned advocate for the defendants drew our attention to the evidence of various witnesses regarding the statements made to them by the plaintiff after his return. Such statements are said to be inconsistent with the evidence now given by the plaintiff regarding his condition and his conduct during the period under examination. In our opinion, no importance should be attached to these statements. Travellers the world over are accustomed to tell tall stories on return from their travels, and to draw the long bow. It may be that in conversation, the plaintiff drew freely upon his imagination and gave stories to witnesses which were not strictly true. It would be unreasonable in our opinion to attempt to bind him down to the stories then given, and we are of opinion that these stories may be safely ignored. The same charitable view cannot, however, be adopted with regard to the statements made by the plaintiff in solemn documents or in connection with solemn proceedings in court. Before examining the evidence given in this case it is necessary to examine the statements previously made by or on behalf of the plaintiff in solemn documents, or at all events, on occasions when he recognised the necessity of adhering strictly to truth.

PLAINTIFF'S FIRST CONNECTED STATEMENT IN MEMORIAL

The plaintiff had an interview with J. H. Landsay on the 29th of May, 1921. But the record of that interview does not show that he gave any account of his wanderings or his condition between the time of his alleged disappearance in 1909 and his reappearance in 1921. The evidence given in the Defamation case instituted by Dr. Ashutosh Das Gupta has already been referred to, and that evidence deals only with the supposed departure of the plaintiff from Darjeeling. The first connected statement by the plaintiff is to be found in his memorial, *Ex J*, which runs thus:

"That your memorialist's body was picked up from the cremation ground and carried away by some sannyasi and that when your memorialist regained consciousness some days after, he found himself lying in a hut surrounded by sannyasis. That owing to this crisis in his life your memorialist suffered from some time from a complete forgetfulness of everything connected with the previous years of his life. Gradually he regained his senses and found himself as one of the Naga sannyasis and from that time led the life entirely of a sannyasi immersed in their atmosphere for nearly twelve years. The result was that the only way in which he could express himself was through the language he heard all round him, that he garbed himself exactly in the manner of his new associates, and his very existence was from now transformed into that of a sannyasi.

That after he had travelled all over India for twelve years his *guru* advised him to revisit his native place according to the custom of the sannyasis. Your memorialist was enjoined by his *guru* neither to reveal his identity nor to return to his family and your memorialist himself had no mind to do so.

That your memorialist on returning to his native town took up his abode in the manner of a sannyasi on the Buckland Bund by the side of the river Buriganga. For nearly three months he sat there when hundreds of people used to visit him and gradually began to question if he was none other than the second Kumar of Bhowal. As time went on fuller reminiscences of his former life began to dawn upon him and he could feel at times that he was back to the scenes of his old life. It was from this time that memories of the past life began to quicken within him and an impulse to go back once more to his family grew."

STORY GIVEN IN COURT

When the plaintiff deposed in court he gave the following story regarding the events which took place after he recovered consciousness in Darjeeling up to the time of his arrival in Dacca.

"What happened after I became unconscious I do not know. I returned to consciousness. I found myself in পাহাড় জঙ্গল (hills and jungle). I was lying on a *khatia*. That was on firm ground and the only house was a tin *chhapra*. There were four sannyasis there besides myself. I asked, 'where am I?' The sannyasis said 'You are weak—don't talk'. They said that in Hindi I could understand Hindi then I had picked it up as in my house were Darwans, syces, mahuts who talked Hindi. As the sannyasis asked me to keep quiet, I kept quiet. I was at the same place for 15 or 16 days. During the period I had no talk with the sannyasis. I do not remember what happened after that. I left after that. I went with the 4 sannyasis. We went on foot and also by train. The next thing I remember is that I was at Benares—at Asighat, Benares. The 4 sannyasis were with me still. At Asighat we stayed in a sadhu's *asram*. We met other up-country and Bengalee sadhus. I met two Bengalee sadhus. I spoke to them. I spoke to them in Bengali. I spoke to the up-country sadhus in Hindi. I was speaking to the 4 sannyasis, whom I mentioned, in Hindi and they spoke in Hindi too. At this time I had lost all memory of who I was. At Asighat we stayed for 3 or 4 months. The 4 sannyasis aforesaid stayed on with me. One year had elapsed from the time I left Darjeeling to the time I left Asighat. From Asighat I and the 4 sannyasis went to Bindhachal. From there we, the 4 sannyasis and I, went to Chitrokoot. From there we five went to Allahabad. Then to Mathura, then to Brindaban. Then to Haridwar (Hardwar). Then to Hrishikesh, then to Lachmanjhola. Then to Dehradun. Then to Hardwar. Then to Kangra. Then to Kashmir. At Kashmir we were at Baramula Sub-division, then at Sreenagore which is ব্রহ্মবানী (capital). Thence we went to Amarnath. We went to these places on foot or by train. On foot we traversed jungle and hill. From Asighat to Amarnath took 4 years or so. Amarnath is a shrine (ঈর্ষ). People visiting Amarnath stay in the village below. At Amarnath we stayed 2 or 3 days. During the period took place an incident. I took মন্ত্র (mantra—verse sacred to any religious order) there and became a disciple (শিষ্য). I took a *mantra* and became a disciple of Dharam Das,

one of the 4 sannyasis, with whom I went I remember the *মন্ত্র* (*mantra*) After this taking of *মন্ত্র* (verse sacred to any religious order), sannyasis called me *Brahmachari* I had an idea how I had come to be among these people This idea I came to have after I had taken the *মন্ত্র* (verse sacred to any religious order) After I took *mantra* I had a talk with my *guru* regarding this matter

Q—Are you in a position to tell the learned judge what your own idea of the matter was after this? (Objected to Allowed)

A—The idea I got was that I was found in a wet condition, at Darjeeling *sasan* (cremating ground) I could not recall who I was or where my home was when at Amarnath I used to think sometimes in my mind as to where my home was and where my relations were

Q—This was before or after the *mantra*?

A—After

I would tell my *guru* this We would talk about my going back to my home and relations *Guru* said, 'I shall send you home when the proper time comes' I asked what he meant by proper time (সময় হওয়া) I understood that if I could renounce the *সংসারী* *মায়া* (worldly attachment) and *bari* and *ghar*, and relations and come back to him, he would take me into the sannyasi This conversation was after I left Amarnath and this was one year before I returned home From Amarnath the 4 sannyasis and I went northwards into the hills and got to Chamba, a *Rajdhani* Thence we went to Kullu Then we went to Sachitmandi, which is within the territory of a *Raja* From there we went to Nepal From Amarnath till we went into Nepal the time that elapsed was 2 or 3 years We travelled on foot or by train We four went from Sachitmandi to Nepal in 2 or 3 years In Nepal we went to Pashupatinath shrine There we met other sannyasis At Pashupatinath there is a great sadhu called Bangali Baba I went to him He talks Hindi From Nepal we went to Tibbet From Tibbet we returned to Nepal Nepal to Tibbet and Tibbet to Nepal took 3 or 4 months From Nepal we descended after a year's stay at Nepal We descended with the same 4 sannyasis with me We went to Braha Chhatra above Nepal It is *বাজধানী* (capital) There I recollected my home was at Dacca I told the *guru* this He said 'Go, your time has come' He said 'Go back to your home' I asked him where I could find him again He said at Haridwar From Braha Chhatra I went alone to various places I went first to Purnea district Then to Rangpur Then to Kamakhya Then to Gauhati District Then I got into a train, went to a place on the other side of the Brahmaputra Then I came to Dacca *via* Fuljhuri "

STATEMENT IN CROSS-EXAMINATION

In cross-examination this was amplified, and he makes out a case that for 6 or 8 months after he recovered consciousness he had the mind and the

knowledge of a small child The statement on this point is as follows "I was not conscious that the sannyasis were different from me I saw the কুট (matted hair) and that they were naked, and the ভস্ম (ash) on their body, but I had no consciousness of any distinction between them and me I had no consciousness as to whether I was a Bengalee, or Punjabee, or English at that moment I lay on a *khata* under a *chhapra* I had no memory of any different kind of bed or bedstead Nor if I was a *bhadralogue* or a peasant Nor of a house-holder or *barragi* nor of a *yogi* or *bhogi* Nor if my previous life was happy or miserable No consciousness at all of my past—like a baby just born I can't recall if I knew Bengali or Hindi—only the sannyasis spoke in Hindi and I understood, and I understood they were Hindusthanis It was as if I was born anew I did not know if I was a man or a ghost

Q—You remembered your Bengali?

A—No

Q—You had consciousness you knew Bengali?

A—I had not I had no consciousness of being surrounded by hills or whether I was in a sea I could not recognise trees, nor sky, nor cloud

Q—Whether it was sky or *patal*?

A—No I started learning things like a child This was my condition till I reached Benares I don't remember, no consciousness, if I got into a train Or how I went to Benares Whether by train or on foot Nor if I went by the Darjeeling Railway The sannyasis began to call me by what name I have no consciousness

Q—They called you like a man or a dog?

A—Don't know They did not give me a name Can't say how they called me I did not see any Bhutia or hillman on my way, nor could I know him if I did I could not know cattle, such as গরু, বাছুর, ভেড়া, ছাগল (cow, calf, ram, goat) I could not know articles of food

Q—Supposing the sannyasis gave you রুটি (bread), would you distinguish it from rice?

A—No "

At first he stated that this mental condition continued long after he reached Asighat at Benares, and in fact continued up to the time at which he received the *mantra* from his *guru* which was some years later In re-examination he was asked to reconcile the fact that he gave a list of the places which he visited after leaving Benares with the statement that he had no consciousness at all, no knowledge until he reached Kashmere In answer to this question in re-examination he stated "I got back full জ্ঞান (consciousness) (সবই আছে everything was in order) at Asighat, Benares", and then after re-examination, when the cross-examination was read over to him, he stated in connection with the evidence given in cross-examination that he had ordinary knowledge of things after Asighat, only he did not know his home and people

It appears, therefore, that his definite case is that after recovery from illness at Darjeeling his mind was a complete blank for 6 or 8 months. Thereafter he had the ordinary knowledge of a man of his age, except that he had no recollection of his own past or of his own identity. This condition continued until he reached Braha Chhatra sometime in the beginning of the year 1920. At Braha Chhatra he recollected merely that he was a man of Dacca district. There was no further recovery of memory until he reached the town of Dacca in the beginning of 1921.

CASE PUT TO MEDICAL EXPERTS

The learned trial judge has discussed at some length the recorded cases of loss of memory, of dual or multiple personality, and of shell-shock, and after coming to the conclusion that experience of shell-shock cases shows that such loss of memory, as that claimed by the plaintiff, was possible, has decided that the plaintiff must, therefore, have lost his memory as he says. The case as put forward by the plaintiff was put to three doctors examined on behalf of the plaintiff. Dr. MacGilchrist was given a statement of the case as it was understood by the plaintiff's legal advisers. The statement of the case put to him is as follows:

"When the Kumar recovered consciousness, his memory of the past was gone and he began picking up his sense perceptions of the objective world afresh. He was, however, able to walk and go about, take his food, perform all the natural functions and live in harmony with his environment, and the objective world.

2 Some years later, a vague impression troubled him now and then that he had his home and his relatives, somewhere or other, but no definite remembrance of them visited him.

3 He continued like this, going about with 4 sannyasis over the whole breadth of India, from Bengal to Kashmere, and back from there to Nepal and Tibet, until about 11 years after his wanderings his memory revived to the limited extent that he was a man of Dacca.

4 During these 11 years, however, he talked in his Dacca dialect whenever he met a Bengalee to talk to. Ordinarily, he carried on in 'Hindi' with his sannyasi companions and the up-country people he met. It may be mentioned he knew Hindusthani from before.

5 When the memory came to him that he was a Dacca man, his *guru* (preceptor) sent him to Dacca, where he managed to arrive in the course of a year's wanderings through various places of Bihar and Bengal.

6 He arrived at Dacca Station at midnight, stayed the night there, and on the following morning as he got up he found the scene round him familiar and was able to make his way to the Buckland Bund unaided.

7 He stayed on the Bund as a sannyasi for 2 to 3 months and the sight of his old acquaintances revived his memory of them, and he also remembered that he was the second Kumar of Bhowal when people near him began talking that he was so. Later, when he was taken to Jaidebpur, his memory revived completely and he knew

his rooms in the palace, all the other rooms in it, all its surroundings, and recognised his own people, i.e., sister, grandmother, nephews, etc., when he met them there.

8 When, later on, friends and acquaintances met him, he was often able to remember the incidents of his past life that had happened in connection with these friends "

Dr MacGilchrist expressed the opinion that such a history was feasible Dr Bradley was asked whether such a statement was consistent with probability, and he answered "It is quite consistent with probabilities, but I would like the word 'possibility' better Such things have happened " Dr Bradley also expressed the opinion that the story was certainly possible Neither Dr MacGilchrist nor Dr Bradley are experts in mental disorders, and they do not pretend that they have come across a case similar to that of the plaintiff

LOSS OF MEMORY

Even Dr Berkeley Hill, who was for years Medical Superintendent of the European Mental Hospital at Ranchi, stated this his practical experience of cases of loss of memory was very small But he added that he had studied the subject very extensively In explaining the case to the court he suggested that if the plaintiff's case was true, the cause of the loss of memory must have been injury to the brain caused either by physical shock to the brain or by a mental shock, such as a strong emotion There is no evidence on record that the plaintiff received any physical injury to the brain, or that there was any such mental shock as Dr Berkeley Hill visualised There is no evidence that the plaintiff had had from before, any fear of being poisoned The plaintiff made it perfectly clear in his evidence that until his return to Dacca he had no idea that he had been poisoned There is nothing in the evidence in the case to suggest that in fact he received any great mental shock In other words, we have no evidence in this case that there was any cause for loss of memory as suggested by Dr Berkeley Hill Cases of loss of memory are very rare, and the mere fact that no cause can be assigned for this particular case of loss of memory is not sufficient to prove that there was in fact no loss of memory Medical Science has not yet advanced to the stage where we can say with certainty that such a story, as advanced by the plaintiff, is impossible, and it has been conceded that nobody can say that the plaintiff's story of loss of memory is an impossible story The story is a possible one It is possible that he lost his memory as he says But to admit that the story of loss of memory is a possible story is not the same as to accept the story as true Loss of memory is a fact susceptible of proof like any other fact, and if, indeed, the plaintiff lost his memory as he says, that fact can be proved by evidence in the ordinary way

NO EVIDENCE OF LOSS OF MEMORY AS A FACT

The learned trial judge made no attempt to examine the evidence regarding this loss of memory and to decide therefrom whether in fact there was a loss of memory He contented himself by holding that loss of memory was possible

JHALKI INCIDENT

The plaintiff wandered throughout northern India for 10 or 11 years according to his own story. Apart from the sannyasi, Gopal Das, whom he examined to prove the rescue at Darjeeling and who deposed to the plaintiff's wanderings during these years, one other witness only was examined to prove any connection with the plaintiff during these years. That witness is Anath Bandhu, Bhattacharjee. He deposed that he knew Ramendra Narayan Roy before the latter went to Darjeeling. He also deposed that he, the witness, had visited many shrines in India in his time, and he asserted that once when at Jhalki with some other pilgrims he met Ramendra Narayan Roy. He fixed the time of this meeting as some time after the death of the eldest of the three brothers. But he was not sure whether it was in the lifetime of the youngest brother Rabindra Narayan Roy. He fixed it, therefore, at some time between one and three years after the disappearance of Ramendra Narayan Roy from Darjeeling. His account of the meeting is as follows: "At Jhalki I met the second Kumar of Bhowal. Mohini Babu first saw him and he took me to him so that I might see him. Mohini Babu knew the second Kumar. When Mohini Babu took me to the second Kumar, he, the second Kumar, was in the company of sadhus. I recognised him as the second Kumar. The upper part of his body was covered with a *gerua* (ochre) cloth fastened at the neck with a knot. He was seated and the cloth was covering his body except the feet. He was seated on a blanket. His hair was longer than it used to be. His hair and beard looked like 5 or 6 months' growth—it looked as if he had not shaved or cut his hair for 5 or 6 months. That was the difference as regards hair between what I saw before and what I saw now. His face was smeared with ashes and his body slightly thinner. I spoke to him. I said 'Why are you here? Go home.' He said in Bhowali tongue 'Guru knows' (গুরু জানে) *Guru*, the spiritual guide, knows. Then I asked, 'কবে বাড়ী যাবেন' (when would you go home?) He said, 'কইতায় পাৰি না' (Can't say). Looking to his strange attitude, and to his taciturn and indifferent mood and the kind of stare with which he looked at me, I said nothing else to him." This description does not suggest that Ramendra Narayan Roy did not know who he was, and it does not in any way confirm his evidence regarding the alleged loss of memory. The evidence of the witness is open to comment in that though he knew that Ramendra Narayan Roy was supposed to be dead, and though he says that he recognised him at Jhalki, it never entered his head to communicate this fact to anybody until he returned home. When he returned home, he told one Akshay Roy about the meeting. He also told a number of other people according to his statement, all of whom are dead. He does not seem to have communicated this fact to any member of the Bhowal family. Moreover, he made it clear in his evidence that he told the other sannyasis with whom he found Ramendra Narayan Roy, who Ramendra Narayan Roy was and where was his home and what was his condition. In this respect he was contradicted flatly by Gopal Das who stated that before the occasion when he, the witness, met Dharam Das at Nankana (that is, after the visit of Dharam Das in Dacca in 1921), he did not know who the *Brahmachari* (plaintiff) was. It is true that in re-examination this witness, who was always extremely susceptible to the suggestions of the learned counsel for the plaintiff, explained this away by saying "When I said in cross-examination that I did not know at Brahma Chhatra who the *Brahmachari* was or whether he was Raja's son, etc., I meant that we would not let him go until we had it from his own mouth,

his district and father's name and home " This answer does not improve matters and is obviously not a straightforward one

RANGPUR MEETING WITH HARIMOHAN BASAK

Further, apart from the fact that Anath Bandhu Bhattacharjee's evidence is not in itself convincing, it does not corroborate the plaintiff in any way regarding the alleged loss of memory, and yet this is the only witness other than Gopal Das who came in contact with the plaintiff before the plaintiff reached Braha Chhatra and remembered that he was a man of Dacca. For the period between Braha Chhatra and Dacca one witness has been examined. He is Harimohan Basak. He deposed that he too knew Ramendra Narayan Roy before the latter had gone to Darjeeling, and he added that in Magh or Falgun, 1326 B.S. he saw him at Kalibari of Rangpur. He was asked "Did you recognise him as the second Kumar?" A—"I thought so, and so I spoke to him. I had given a *bhandara* (feast) to the *sadhu*, and after their meal was over, I spoke to the *sadhu*. I said 'I want to put a question to you, would you answer truly?' He said in Bengali with a *tan* (intonation) 'কি বলতে চাও?' (What do you want to say?) I said 'আপনি জয়দেবপুরের কুমার বলে মনে হয়' (You seem to be the Kumar of Jaidebpur?) He stared at me, but made no reply and sighed a deep sigh. He said nothing else. I repeated my question, but he said nothing. He looked into my eyes first, and towards the end he sat on—not with downcast eyes, but with eyes not turned towards me, but down."

This evidence too is inconsistent with the plaintiff's story. It indicates first that plaintiff knew by this time that he was the Kumar of Jaidebpur, thus contradicting the statement that until he reached Dacca he had no idea who he was. The evidence of this witness too is far from convincing, but even if accepted, it does not in any way corroborate the plaintiff's version. We thus have apart from Gopal Das only two witnesses to prove this alleged loss of memory, and those two witnesses tend to contradict rather than to support the plaintiff's story. I have referred to the evidence of Gopal Das before. There is reason for suspecting that he is not the *sannyasi* Darsan Das who he now pretends to be. His evidence does not read like the evidence of an honest witness, and as I have just pointed out, he had no hesitation in altering his story with regard to his knowledge of the identity of the man with whom he was travelling.

ENTIRE ABSENCE OF EVIDENCE TO SUPPORT PLAINTIFF'S STORY

Dharam Das has not been examined by the plaintiff, and no attempt has been made by the plaintiff's party since the case was opened to obtain his evidence. No attempt has been made to secure the evidence of Loke Das or Pritam Das, and no attempt has been made to obtain the evidence of the people with whom the plaintiff must have come in contact during these 9 or 10 years. The absence of all evidence in support of the plaintiff's version is most noticeable, and we are left practically with the uncorroborated statement of the plaintiff himself as the only basis for holding that the plaintiff lost his memory. The plaintiff is certainly not a truthful individual. He has altered his story from time to time to suit the exigencies of the case,

and I think that it is unsafe to hold any fact proved which is based on his uncorroborated testimony. I hold, therefore, that there is no satisfactory evidence that the plaintiff did lose his memory.

The plea of loss of memory is obviously an extremely convenient one for a person coming forward to claim the identity of a man long supposed to be dead. It helps him to avoid answering questions, and it helps to explain ignorance of the past which would be otherwise inexplicable. It seems to me that the plaintiff's failure to prove by reliable evidence that he had, in fact, lost his memory is sufficient to rouse the gravest suspicion regarding the truth of his story. If the plaintiff did not lose his memory, then we are left without any explanation why he made no attempt to return to his family after recovering consciousness. We have no explanation why he made no attempt to communicate with his family and relieve their anxiety.

ALLEGED REASON FOR RETURN HOME

We have, however, an explanation offered by him as to the reason for his ultimate return to the bosom of his family. In his memorial he made it clear that he returned to his family under the instructions of the *guru* to ascertain whether the attractions of worldly affairs and family ties were strong enough to induce him to abandon the idea of becoming a *sannyasi*. He stated clearly that it was the habit of *sannyasis* to return to their families after the lapse of 12 years and subject themselves to such a test to determine their fitness for the avocation of *sannyasis*, and he made it clear that it was for this purpose that he returned to Jaidebpur.

It is impossible to reconcile this story with the story in court that until his arrival at Dacca he had no idea of his identity, his condition in life or where his home was except that he was a man of Dacca district. It is also difficult to understand why he should take one year to reach home from Braha Chhatra, if he was sent to subject himself to the test whether worldly affairs were still attractive for him, and if, as he alleges, he was to report himself to the *guru* after the lapse of a year if he had been able to pass the test. It is also difficult to understand why he should wander so far out of the way as Kamakhya in the Assam Valley, if he was coming from Braha Chhatra to Jaidebpur to subject himself to the test. It seems clear that the plaintiff is not able to give a rational and consistent explanation of the reasons for his return to Jaidebpur or the reasons for his absence from Jaidebpur for so many years.

INTERVENING YEARS—2 RETURN OF DARJEELING PARTY

Bibhabati and the rest of the Darjeeling party left Darjeeling on May the 10th to return to Jaidebpur. They reached Damukdia Ghat during the night of the 10th May, and from there they sent a telegram dated the 11th of May, 1909 to Jaidebpur which reads as follows: "We reach Jaidebpur this midnight. Sd. Mukunda." The entry in the diary of Satyendranath Banerjee dated the 8th May, 1909, shows that messages had already been sent to Uttarpara where Bibhabati's relatives lived, and to Jaidebpur, informing the death of Ramendra Narayan Roy. Somebody from Uttarpara had wired at once to Jaidebpur in these words: "Sister earnestly requests that Bibha should come here directly kindly agree and arrange accordingly. Ramnarain."

It is apparent that on receipt of this telegram Ranendra Narayan Roy, the eldest of the three brothers, apprehended that Bibhabati would be taken straight to Calcutta and thence to Uttarpara and would not be brought back to Jaidebpur. He, accordingly, sent a party of men to intercept them at Poradah. What happened at Poradah is described in the diary of Satyendranath Banerjee under date May the 11th. It reads "At Poradah Kumar sent Jogen, Jogesh, Billoo, Dwarik Master, Nikka Babu, his wife and a lot of women and servants. The reason for sending so many men and posting them at Poradah was lest I should take sister away to Calcutta. Under instruction Jogen after making inquiry wires to Bara Kumar from Poradah 'No testamentary disposition'. The men and especially Dwarika Master got upper hand in the management and I was left alone. I was feeling this, but did not express anything then."

Biloo referred to in this note is Jitendra Chandra Mukherjee, son of Indumoyee and nephew of Jyotirmoyee Devi. He stated in evidence that he was with the party which went from Jaidebpur to Poradah and intercepted the party from Darjeeling, and he asserted that "Satya Babu wanted to take defendant No. 1 to Calcutta. We said, 'No'. We prevailed. We brought the second Ranu to Jaidebpur. Satya Babu came with us to Jaidebpur." It has been argued before us that Satyendranath Banerjee intended to take his sister straight to Calcutta and that he was only thwarted by the foresight of Ranendra Narayan Roy in sending a party to Poradah to intercept them. In my opinion the evidence on record shows that this suggestion is in fact unfounded. The telegram sent from Damukdia Ghat on May the 11th would otherwise have no meaning. The telegram from Damukdia Ghat would arrive at Jaidebpur much too late to allow anybody from Jaidebpur to take any action which could possibly prevent Satyendranath Banerjee continuing the journey to Calcutta. Damukdia Ghat is only a few hours' journey from Poradah. Jaidebpur is nearly twenty-four hours' journey from Poradah station. There would be no object whatever in sending a telegram from Damukdia Ghat informing the Jaidebpur people of their proposed arrival at midnight, if they intended to go straight through to Calcutta. Moreover, there is absolutely no evidence to show that the tickets taken from Darjeeling were not through tickets to Jaidebpur. There is nothing to indicate that any other tickets were purchased at Poradah Station. The only justification for thinking that Satyendranath Banerjee did indeed intend to take his sister straight to Uttarpara is the evidence of Jitendra Chandra Mukherjee. In my opinion, Jitendra Chandra Mukherjee has deliberately perjured himself on a number of occasions in the course of his evidence, and I do not consider his deposition as having any value whatsoever. I am satisfied that, in fact, whatever designs he might have had, Satyendranath Banerjee did not attempt to take his sister straight to Uttarpara.

CONDUCT OF SATYENDRANATH BANERJEE ON RETURN FROM DARJEELING

As soon as the party arrived at Jaidebpur, the younger brother of the late Ramendra Narayan Roy began to make enquiries whether his brother had left any will or made any arrangement for adoption. Satyendranath Banerjee, as his diary shows, answered falsely that Ramendra Narayan Roy had given a verbal power of adoption to his sister Bibhabati. A few days later—the exact date is not known—a deed of management was produced which had apparently been signed by Ramendra Narayan Roy, Ranendra Narayan Roy

and Rabindra Narayan Roy, and which provided that on the occasion of the death of any of the brothers the estate of the deceased brother should be managed by the two surviving brothers and that the widow of such deceased brother should receive only the sum of rupees twelve thousand per annum as her maintenance allowance

Satyendranath Banerjee jumped to the conclusion that this document was a forgery, and he went to Calcutta to consult relatives there as to the course he should adopt. The learned trial judge seems to have suspected that the deed was in fact a forgery. It is sufficient to state that after putting forward this deed the brothers of the late Ramendra Narayan Roy made enquiries with the object of registering the deed, but took no action in the matter. The learned trial judge states with regard to this deed that "There is no doubt that such a deed was propounded, but its object was to stave off the brother whose attitude had become plain. He had become a peril to the estate, as his own proceedings recorded in his own diary will show." This finding is not based on any evidence whatever and is clearly unsupportable. If the document was a genuine document, it had been signed by Ramendra Narayan Roy long before Satyendranath Banerjee had done anything to show that he had designs on the estate. Even if the document was a forgery, there is nothing on the record to show when it was first propounded, and there is nothing on the record to show that Satyendranath Banerjee had become a peril to the estate or that his supposed attitude, namely, of an intriguer, who desired to obtain possession of his sister's share had become plain. Whatever material there is in the diary to show Satyendranath Banerjee's attitude is of a date subsequent to the production of this deed of management. This finding of the learned trial judge is one of a number of findings which are based on no evidence whatever and which mar an otherwise carefully considered and well-written judgment.

RECKLESS ACCUSATIONS AGAINST DEFENCE WITNESSES

It seems to me that the reason for these findings is that the learned trial judge was deeply impressed with the campaign of vilification and of abuse deliberately launched by the legal advisers of the plaintiff against Satyendranath Banerjee. As an indication of the reckless manner in which accusations were made against the defence witnesses, reference to the cross-examination of J. H. Lindsay is instructive. The learned pleader who cross-examined J. H. Lindsay suggested bluntly that the witness had deliberately forged a document, and he (the pleader) adopted a threatening attitude to the witness in consequence. It is perfectly clear that there was no ground whatever for the suggestion, and Mr. Chatterjee has had the grace to admit that the suggestion was wholly unjustified. Jagat Mohini, the nurse of Darjeeling, deposed in the case. She gave evidence to the effect that though for the purpose of her profession she described herself as Dasi, she was, in fact, a Brahmin lady. The question whether she was a Brahmin or non-Brahmin was remotely relevant, it is true, but by no straining of the language of the statute could anybody have imagined that there was justification for leading evidence to suggest that this lady had at a different time and at a different place been the mistress of a Mussalman. Yet evidence to this effect was allowed and admitted by the learned trial judge. It was clearly irrelevant and inadmissible, and its object was clearly to prejudice the mind of the judge. When Satyendranath Banerjee was examined in court, the learned counsel for the plaintiff did not hesitate to suggest to the witness that he had deputed

Dr Ashutosh Das Gupta to tour in northern India in search of Ramendra Narayan Roy and to murder the latter when found. Considering that the plaintiff had closed his case a year before Satyendranath Banerjee had deposed, and had not adduced any evidence whatever to show that there had been such a deputation, it is clear that the question was unjustified, and that, again, its object was merely to prejudice the court against this particular witness.

SATYENDRA'S DIARY

When Satyendranath Banerjee returned from Calcutta to Jaidebpur, he opened the diary to which reference has so frequently been made. His reason for opening the diary is not very clear, but it seems that he opened it in view of the advice given to him in Calcutta that he should watch carefully what his sister's brothers-in-law were doing. The diary when opened commenced with an entry under date May the 7th, and it was kept fairly regularly until November the 22nd of that year. By that time Satyendranath Banerjee had persuaded his sister Bibhabati to put him in control of her estate and to leave Jaidebpur and come with him. The deed of management had been abandoned, and he apparently had no further apprehension that the people at Jaidebpur would do anything to prejudice the interests of Bibhabati. He, therefore, discontinued writing the diary, and apparently left it lying up somewhere where it was picked up by somebody else. No good reason has been offered why he chose to start the diary with an entry under date May the 7th. It was admitted in the argument before us that the diary was, in fact, started after the return of Satyendranath Banerjee from Calcutta to Jaidebpur, and that, therefore, the entries for May the 7th, 8th, 9th, 10th, 11th and 12th were written on some day after the 20th of May. The accuracy of the entries under date May the 7th, 8th and 9th has been questioned by the plaintiff. But it has been conceded that all the other entries in the diary are truthful entries, though not necessarily absolutely accurate. There are mistakes in the entries from May the 7th to May the 11th, and it seems that there has been inaccuracy in ascribing events of those dates to their proper dates, and the question naturally arises whether these were honest mistakes or whether the entries in the diary for these dates were deliberately wrong and misleading.

OBJECT OF OPENING THE DIARY

Although, on the one hand, no very convincing explanation has been placed before us as to why Satyendranath Banerjee should open the diary, on the other hand, no reasonable suggestion regarding a sinister motive has been put forward by the plaintiff. It is obvious that if Satyendranath Banerjee suspected that Ramendra Narayan Roy was still alive, he must have anticipated the re-appearance of Ramendra Narayan Roy in the near future, and he could not possibly have anticipated that Ramendra Narayan Roy would return and claim the property twelve long years later. The entries in the diary would be of no value as evidence, if produced immediately after the events to which they related. All persons referred to in the diary were then alive and would be available to depose as to the truth of those entries. All of them at that stage would be expected to have fairly vivid recollections of what actually happened. It seems to me incredible that Satyendranath Banerjee could ever have expected to use this diary to contradict any witness or to influence the mind of any court. The later entries in the diary are most interesting, they are admittedly honest and they are frank. He states clearly in the diary his own misconduct, his own irritation, his own petulance. There is no attempt at hiding

anything and no attempt at glossing over any of his acts. Anybody who reads this diary from the beginning to the end would have to concede that he could not have intended to produce this diary as evidence in court. If he did not intend to produce this diary as evidence in court, I am unable to understand what sinister motive could have induced him to open it. It seems to me from the circumstances, that however inadequate the reasons for opening the diary may have been, and however inaccurate the entries in the diary may be, there could have been no dishonest motive in opening it and no deliberate entry of wrong details.

MANNER OF PRODUCTION IN COURT

The manner in which this diary was produced in court deserves consideration. From the pages of the diary itself it is obvious that the diary was originally a bound book. When Satyendranath Banerjee was cross-examined, separate pages of the diary were placed before him, and he was cross-examined with regard to those pages. In re-examination he stated on oath that when he last saw the diary it was a bound book. No explanation was offered by the plaintiff's party as to how this document came into their possession. But it appears that they had a summons served upon Mon Mohan Bhattacharjee, a dismissed servant of Bibhabati, to produce this diary. The summons was served upon Mon Mohan Bhattacharjee, and Mon Mohan Bhattacharjee was examined as a witness on the side of the plaintiff. But though he was examined as a witness, he did not produce the diary in court, nor did he refer in his evidence to this diary. Presumably he must have made over the diary out of court to the plaintiff's advisers. He could have deposed as to the manner in which and the source from which he obtained possession of the diary. He could have deposed as to the condition of the diary when he made it over to the plaintiff's legal advisers, and we are justified in thinking that if he produced it in a mutilated condition before the plaintiff's advisers, they would have asked him to produce it in court and say that it was mutilated before the plaintiff and his advisers obtained possession of it. This was not done, and it seems to me that the inference which may fairly be drawn is that the diary was not mutilated when it left the possession of Mon Mohan Bhattacharjee and went into the possession of the plaintiff's legal advisers.

MISSING PAGES

When Satyendranath Banerjee was being cross-examined with regard to the diary, the defendants called upon the plaintiff to produce the rest of the diary. The plaintiff, however, filed merely a number of sheets representing separate pages of the diary, all except three of which were blank. The defendants protested and filed a petition in court. In reply to that petition the plaintiff put in another petition to the effect that they had produced all the papers constituting the diary which were in their possession. Though the plaintiff had produced a large number of blank papers, there remained still missing a large number of pages of the diary which unfortunately covered periods of the greatest importance. The pages from the 13th of May to the 24th of May are missing, and in respect of those dates the plaintiff has made allegations concerning the conduct of Satyendranath Banerjee. The allegations made originally have been disproved and abandoned, and it seems clear

that the entries in those dates would have had reference to the conduct of Satyendranath Banerjee. I find it difficult to believe that the diary would be handed over to the plaintiff's advisers as a mass of loose sheets. If sheets had, in fact, been torn from the diary, one would have expected the person so doing to retain the blank sheets as well as those on which there was writing, and the very production of a number of 'blank sheets suggests strongly that the entire diary was, in fact, in the hands of the plaintiff's advisers. I have little hesitation in holding that the entire diary was with the plaintiff's party and that pages of the diary have been withheld by the plaintiff for reasons best known to them. A legitimate inference is that those pages, if produced, would not support the plaintiff's version.

INFERENCES FROM ENTRIES PRODUCED

However, certain pages from the diary have been produced. They have been put to Satyendranath Banerjee in cross-examination and he has admitted every one of them. He has stated that with regard to some of the entries there might be mistakes, but he admitted frankly the great majority of the entries. These entries have provided almost all the materials upon which the attack on Satyendranath Banerjee has been based. The criticisms of his conduct which are based wholly on the diary can be justified. The evidence which goes beyond the diary entries is given only by witnesses, the majority of whom are obviously not reliable. The entries in the diary show beyond all possibility of doubt that when Satyendranath Banerjee was returning with his sister from Darjeeling to Jaidebpur, he was thrust on one side at Poradah station by the servants of the estate, and it is clear that he resented the slight bitterly. He said so clearly in his diary, and it is only natural that a man in his position should resent such a slight. It is further clear from his diary that he regarded the deed of management which was propounded by the brothers-in-law of his sister as a forgery, and he thought Ranendra Narayan Roy and Rabindra Narayan Roy were determined to cheat Bibhabati of her share in the estate. It is further clear from his diary that in the first few months after the return to Jaidebpur Bibhabati was content to remain at Jaidebpur and had apparently every confidence in her late husband's relatives. In this period Satyendranath Banerjee was endeavouring to detach her from Jaidebpur and to persuade her to come and live with him and to entrust him with the management of her affairs. Ultimately, she consented to do so, and Satyendranath Banerjee obtained the control of Bibhabati's property. The cross-examination of Bibhabati and Satyendranath Banerjee shows clearly that he has had absolute control of her property and that he has profited therefrom very considerably. Whether Satyendranath Banerjee inherited any property from his parents or not, such property must have been small in value and utterly insignificant when compared with the vast property in which Bibhabati had a life interest. Satyendranath Banerjee admitted that there are valuable properties which stand in his name and which he claimed as his own. He made it clear that he acquired those properties either by gift from his sister or in part at least from the income which he derived from using her property. There can be no possible doubt that Satyendranath Banerjee has attained wealth through his control of his sister's estate. But the mere fact that he has prospered in this way is not, in my opinion, sufficient to justify the assumption that his conduct in detaching Bibhabati from her brothers-in-law was necessarily dishonest. It is clear that he believed that her brothers-in-law were deter-

mined to cheat her and appropriate her property to themselves. It is further clear that the atmosphere at Jaidebpur was by no means the right atmosphere for a young widow like Bibhabati. Bibhabati was the daughter of cultured parents, even though they were poor. The letters of her mother show clearly a standard of education to which Jaidebpur zemindars could not lay claim. The elder of the two brothers-in-law was a drunkard, and the younger was a drug addict according to the plaintiff's witnesses. Both were uncultured, both were immoral to a degree. There can be little doubt that anybody with the best interests of Bibhabati Devi at heart would have attempted to get her away from Jaidebpur.

SATYENDRA'S CONDUCT TOWARDS BIBHABATI A DEVOTED BROTHER

Bibhabati has since lived with Satyendranath Banerjee, and there is no suggestion and no ground for suggestion that his conduct towards Bibhabati has been other than a brother's conduct should be. There is nothing to show that he has attempted to cheat her or deceive her or to keep her under control against her will. He has been a devoted brother, and apparently she is devoted to him. A complaint constantly made by the learned counsel for the plaintiff was that Bibhabati was too devoted to her brother Satyendranath Banerjee. In these circumstances, the mere fact that Satyendranath Banerjee induced Bibhabati to leave Jaidebpur and to hand over control of her property to him does not indicate that he was dishonest or actuated by dishonest motive. It should be remembered that a pardanashin lady in this country has to rely to a very great extent on some male person to manage her affairs, and the obvious person to rely on in the case of Bibhabati was her own brother. I cannot hold from the mere fact that she has doted upon her brother and has made generous gifts to him that Satyendranath Banerjee is, therefore, to be condemned in the manner adopted by the learned counsel for the plaintiff.

NO PROOF OF DEPRAVITY OR OF IMPROPER MOTIVES

Our attention has been drawn to the entries in the diary and we have been asked to draw an inference from these entries that Satyendranath Banerjee was actuated by improper motives or that he was even highly dishonest. In the entries dated October the 17th, 1909 there is an entry "Quarrels between Bara and Chhoto Bow a healthy sign—Chhoto Bow encourages sister and says she will give witness on her behalf." It has been suggested that nobody but a person utterly depraved would gloat over quarrels between two sisters-in-law which would tend to break up the unity of the family. It must, however, be realised that Satyendranath Banerjee at that stage was convinced that the people at Jaidebpur were determined to deceive Bibhabati, and by that deceit to cheat her out of her property. Such being the case, it was not unnatural for him to rejoice in dissension among people whom he regarded as his enemies and the enemies of his sister. The fact that Satyendranath Banerjee rejoiced in the quarrels between the members of Jaidebpur family does not suggest to me that he was in any way depraved.

There are entries in the diary regarding women being brought to Jaidebpur for the amusement of Rabindra Narayan Roy, the youngest of the three

absence. She asserted that this talk of *kushaputtahka* occurred in Jaidebpur before the date of the *sradh*, and that *kushaputtahka* was not held on account of the assurance given by Satyendranath Banerjee that the body had, in fact, been cremated. She asserted further that a month or a month and a half after the *sradh* ceremony, an anonymous letter was received by Ranendra Narayan Roy which induced him to say that he would go out in search of Ramendra Narayan Roy. He was dissuaded again by Satyendranath Banerjee. She asserted further that one Akshay Roy, a distant relative of the family, was sent out in search of Ramendra Narayan Roy, and that this Akshay Roy from time to time gave information which encouraged them to hope that Ramendra Narayan Roy was still alive. She also stated that three or four months after the supposed death of Ramendra Narayan Roy, a *sannyasi* appeared at the Madhab Bari and made a statement to her son-in-law, Sati Nath Banerjee. She said that the statement made was that he had seen a Bengalee, who was a rich man's son, going about with *naga* *sannyasis*, and that the *sannyasi* knew how and where the *naga* *sannyasis* had obtained possession of the rich man's son. She asserted that an attempt was made the next day to get hold of the Madhab Bari *sannyasi*, but the *sannyasi* disappeared and no further trace could be found. Jyotirmoyee Devi asserted that she used to go to visit Kripamoyee Devi at Benares, and during those visits she used to enquire of *sannyasis* whether they had any information about Ramendra Narayan Roy. She stated that she met *sannyasis* at Benares and several of them were able to give her information about her brother, and that the information she received from them kept hope alive in her heart. In 1917 a *mouni* *sannyasi*, that is to say, a *sannyasi* vowed to silence, appeared in Jaidebpur. Some time after his appearance rumours spread that Ramendra Narayan Roy was alive and was wandering about with *sannyasis*. The plaintiff's party asserted that the *mouni* *sannyasi* communicated this fact to Jyotirmoyee, Devi and others by writing it down on a piece of paper. The defendants admitted that a *mouni* *sannyasi* came to Jaidebpur and admitted that the rumour that Ramendra Narayan Roy was alive was very strong in that year. They denied that the *sannyasi* made any communication to any member of the Bhowal family, and they suggested that the story was probably born in the brain of Akshay Roy who was given to ganja smoking. Whatever the origin of the rumour, it swept the countryside and thousands of people believed in it to such an extent that Satyabhama Devi was induced to write a letter to the Maharajadhiraj Bahadur of Burdwan regarding the rumour. That letter is Ex Z 33 and reads as follows

RANI SATYABHAMA'S LETTER TO MAHARAJA OF BURDWAN

"Submitted with auspicious blessings, I did not write any letter to you on any occasion, nor you too wrote any letter to me. But we and you have been known to each other from before. I am the widow of the late Raja Kali Narayan Roy Chowdhury Bahadur and mother of late Raja Rajendra Narayan Roy Chowdhury Bahadur, zemindar of the Bhowal Pargana within the district of Dacca. I had (by the said son) three grandsons (son's sons) Kumar Ranendra Narayan Roy, Kumar Ramendra Narayan Roy, and Kumar Rabindra Narayan Roy. Those three became major and died untimely. Those three were married, none of them had any issue, either male or female. So much so, that there is none to light the taper of the family (to continue the line)

The eldest grandson died at our own house at Jaidebpur, the second one died at the Darjeeling hill, and the youngest died at Dacca. It is about 8 years since, that the second one went to Darjeeling with his wife and brother-in-law. He died there from blood dysentery.

There is a rumour for about two months in this place to this effect. The second Kumar Bahadur of Bhowal is alive. After his death, his body was taken to a cave, for performing funeral rites. Owing to a great storm and heavy shower setting in at that time, they put fire to his mouth and left the body at that place without burning the same. Then an ascetic came with his followers, took him away and made him alive. Now it is reported that he has become a recluse and is living with him. He does not want to enter into the worldly affairs any more. I have not yet come to know definitely where he really is. Many people speak of many places. Such a rumour is afloat in different districts, such as, Dacca, Faridpur, Barisal, Mymensing, Rangpur, Dinajpur, Comilla, etc. Many people are daily wanting to know informations from me, regarding this matter. I have not yet been able to decide one way or the other. On hearing all this I have been passing my days in weeping.

I have come to know from those who went to Darjeeling with the late second Kumar that you too were at Darjeeling at the time of death of the second Kumar. Informations were sent to you after his death, it is said that you arranged for the *tulsi* leaves and the Ganges water. Hence I write to you whether these incidents are true or not, whether the body of the second Kumar was, in fact, burnt? It is very likely that you should be cognisant of all these facts. So, I might be consoled to a certain extent, if you write to me the real facts as far as you know, regarding this matter. I hope, you will not neglect this matter, and give me a faithful account.

What else, in particular, shall I write, all are well here, please make me happy by writing good news regarding your health and that of your family. Finis—With blessings, Sri Satyabhama Devi."

The answer to that letter was not produced in the lower court. But a letter written by the Maharaja of Burdwan in the year 1921 was produced as though it had been written in answer to Rani Satyabhama Devi's letter of 1917. The answer to the letter of 1917 was, however, produced before us and was admitted in evidence with the consent of both sides. That letter is *Ex Z(33a)* and is in these words:

MAHARAJA'S REPLY

"I received your letter of the 18th Bhadra in due time. I am writing as far as I remember of the matter about which you have wanted information. I was staying at Darjeeling when this calamitous event happened there. I also recollect that some persons came to my local Superintendent and gave him this information, it was from him that I heard that Kumar Ramendra Narayan of Bhowal had died. Thereafter, whether it was in the morning or in the evening I do not exactly remember—I saw an assemblage of men at the place where dead bodies are burnt at Darjeeling, and having enquired who had died, I was told in reply that the said Kumar of Bhowal had died,

and that it was his body that was being burnt This is all that I know about the said event

Please know that the members of the Raj family are well I hope you are well Yours, Sree Bejoy Chand Mahatab (Burdwan) "

The rumour seems to have died down again, and nothing more of interest occurred until the arrival of the plaintiff in 1921

STORY OF KUSHAPUTTALIKA

It will be necessary to consider whether the allegations regarding the *kushaputtalika*, the receipt of the anonymous letters, the visit of the Madhab Bari sannyasi and the revelation made by the *moum* sannyasi are true or not With the exception of *kushaputtalika*, the evidence on the other details came only from Jyotirmoyee Devi and members of her family Regarding the *kushaputtalika*, it is curious that none of the members of the Bhowal family seem to have heard of the second cremation It is the case for the plaintiff that an infructuous attempt to cremate the body of Ramendra Narayan Roy took place on the night of May the 8th, 1909, and that a second cremation with a substituted body was held as publicly as possible in daylight on the 9th of May It is the case for the plaintiff that Bibhabati Devi was not a party to any conspiracy either to murder her husband or to burn a substituted body in his place It is the case for the plaintiff that Bibhabati was allowed to see her husband's body at about 9 P.M. on May the 8th when it was about to be taken out to the cremation ground, and it is again their case, and proved by the plaintiff's witnesses, that Bibhabati Devi stood on the verandah upstairs at "Step Aside" on the morning of May the 9th when the body was taken out for cremation that day In explanation of these facts, a definite case has been made out that Bibhabati was told that it was impossible to cremate her husband's body on the night of May the 8th, and that it was necessary to bring that body back to "Step Aside" in order that it might again be taken out on the morning of May the 9th In other words, according to the plaintiff and his advisers, there was no attempt to conceal from Bibhabati the second cremation, and the story of the second cremation was openly given out in order to avoid suspicion arising out of the abortive attempt to cremate on the previous night If this was true, it seems certain that when the truth was revealed at Jaidebpur on the return of the party from Darjeeling, the story of the second cremation would have been given out But that story was certainly not given out None of the witnesses examined on behalf of the plaintiff suggested at any stage they ever heard of the morning cremation of a substituted body The case they made out is that they were informed merely that the body was missing and could not be cremated

FACTS NEGATING THE STORY

The estate accounts show an entry under date 12th May, 1909 of a payment in cash of Rs 20/- to the priest Aswini Kumar Chakravarty to take the ashes of the late second Kumar of Bhowal to Naihati, and there is on record an order from the manager on the cashier of the same day directing him to pay Rs 20/- to Aswini Purohit as advance for going to Naihati for throwing the *asthi* into the Ganges It has been admitted that it is the practice in the

Bhowal family on the occasion of the cremation to take the *asthi* (which is apparently a small bone) from the ashes and take it to the Ganges to be immersed therein. It is clear, therefore, that something purporting to be the *asthi* of Ramendra Narayan Roy was taken from Darjeeling to Jaidebpur and was sent from Jaidebpur to Naihati to be thrown into the Ganges. It is extraordinary that this should be done, if the people in Jaidebpur were being told that the body had not been cremated. The learned trial judge at page 50 of his judgment gives a list of the witnesses who deposed to the talk about *kushaputtalika*. None of these witnesses stated that they heard of the morning cremation. All of them stated that it was given out that owing to storm and rain the body could not be cremated. It is obvious that the whole of the Darjeeling party could not have been parties to a conspiracy to burn a substituted body. As I have pointed out above, it is admitted that Bibhabati was not party to such a conspiracy. It has also been established that on their return from Darjeeling, Satyendranath Banerjee was definitely out of favour and he was pushed on one side both by the brothers of the late Ramendra Narayan Roy and by their servants. His influence, therefore, was not then such as to induce all the members of the Darjeeling party to remain silent. It seems to me incredible that there should have been a talk of *kushaputtalika*, and yet no revelation of the second funeral procession. If there had indeed been a talk of *kushaputtalika*, we might except a reference to it to be made in the diary of Satyendranath Banerjee. The fact that such a talk had occurred was of importance from his point of view, and if he were keeping his diary as a note for future guidance, one would think that the particular explanation he had given would be worth recording for future reference. The pages of the diary in which any such note could have occurred have been withheld, and the inference is that those pages would not support the plaintiff's story. It is admitted further that no reference to this *kushaputtalika* occurs in any letter, in any note, in any piece of writing which came into existence before the appearance of the plaintiff in Dacca in the year 1921. It is an admitted fact that in the year 1917 there was a wide-spread rumour to the effect that Ramendra Narayan Roy was alive and was wandering in the company of sannyasis, and that the rumour became so prevalent that the old grandmother Rani Satyabhama Devi wrote a letter to the Maharajadhiraj of Burdwan. In that letter she referred to the rumour that was afloat and to the nature of the rumour, but she made no reference whatever to any story that there had been a talk of *kushaputtalika*. The conduct of all the people concerned is such that I cannot believe for one moment that there was such a talk of *kushaputtalika* as the plaintiff pretends.

ALLEGED RECEIPT OF ANONYMOUS LETTER BY BARA KUMAR

The plaintiff's party further alleged that about a month and a half after the return of the party from Darjeeling an anonymous letter was received by Ramendra Narayan Roy in which there was some reference to Ramendra Narayan Roy. According to Jyotirmoyee Devi, Ramendra Narayan Roy told her the contents of the letter and said that he would go out in search of his brother. He allowed himself, however, to be dissuaded by Satyendranath Banerjee who then produced the certificate granted by Dr Calvert as a proof that Ramendra Narayan Roy was dead. Jitendra Chandra Mukherjee also deposed regarding this anonymous letter, but he added that that he himself did not see the letter. This witness mentioned another communication, namely, a post card received some days after the anonymous letter, and stated

that the seal on this post card could not be deciphered. A son-in-law of Jyotirmoyee Devi, namely, Chandra Sekhar Banerjee, also mentioned the arrival of the anonymous letter, but he did not state what the contents of the letter were, nor whether he ever saw the letter. Another son-in-law, Sati Nath Banerjee, deposed that a letter came to Bara Kumar, the postal seal of which could not be deciphered. The letter concerned the second Kumar. He supported Jyotirmoyee in the statement that Ramendra Narayan Roy proposed to go out and search but was dissuaded by Satyendranath Banerjee. This witness mentioned that the people who saw the anonymous letter were Jitendra Chandra Mukherjee, Rajani Kabiraj and Rai Sahib Jogendra Nath Banerjee. He was contradicted in this respect by Jitendra Chandra Mukherjee and by Rai Sahib Jogendra Nath Banerjee. Rajani Kabiraj was unfortunately dead. This anonymous letter has not been preserved, it has not been seen by any independent person. It did not produce any conduct on the part of the people at Jaidebpur.

ALLEGED ADVENT OF A SANNYASI AT MADHAB BARI

It is alleged that some two months after the receipt of this anonymous letter, a sannyasi appeared at the Madhab Bari one evening, and that Sati Nath Banerjee met him as he was returning from his prayers. The sannyasi beckoned to Sati Nath Banerjee, and the following conversation took place. The sannyasi asked in Hindi: "Do you hold any post here?" I said no, and said who I was. Then he said: "Who is the *mahk* of this Bhowal Raj?" I said: "There were 3 Kumars, but two of them are living and the third died at Darjeeling some time ago. His body was taken to *sasan* (burning ground) and he could not be cremated and the people who had taken him there did not find him." Hearing that the sannyasi said: "It is very strange. I have seen a Bengalee rich man's son roaming with sannyasis, and heard that he was found at Darjeeling." Sati Nath went on to say that he asked the sannyasi to describe the appearance of the rich man's son and the sannyasi did so. From the description Sati Nath Banerjee thought that the man described was the Kumar, and he told Jyotirmoyee Devi about this. Jyotirmoyee Devi and Jitendra Chandra Mukherjee both stated that they heard this story from Sati Nath Banerjee, and they made enquiries both in the Madhab Bari and in the neighbourhood and later in Dacca and other places in the district, but they were unable to find any trace of this particular sannyasi. It is extraordinary that a sannyasi could disappear so quickly from a place like Jaidebpur. It is extraordinary that he should give no clue to Sati Nath Banerjee to enable the latter to trace the whereabouts of Ramendra Narayan Roy. It is still more extraordinary that any sannyasi at that time should know anything at all about Ramendra Narayan Roy. The definite case of the plaintiff and of the sannyasi who has been examined as one of the rescuers, is that for six or eight months after the cremation in Darjeeling the plaintiff was like a little child, his mind was a complete blank. Neither he nor his rescuers had an idea who he was, what he was or of what race or nationality he was. They certainly had no idea that he was a rich man's son, nor was there anything in his then condition to indicate that he was a rich man's son. In other words, if the evidence given by the plaintiff and Gopal Das is in any way true, no sannyasi could possibly have gone to Jaidebpur within six months after cremation at Darjeeling and told them the story which is said to have been told by one Madhab Bari sannyasi.

ALLEGED QUEST OF AKSHOY ROY

Jyotirmoyee Devi, Jitendra Chandra Mukherjee and Sati Nath Banerjee all stated that after the visit of this Madhab Bari sannyasi, one Akshay Kumar Roy was deputed by Ramendra Narayan Roy to search for Ramendra Narayan Roy, and these witnesses asserted further that Akshay Kumar Roy was absent for four or five months from Jaidebpur in prosecution of that search. The defence alleged that Akshay Kumar Roy was a mad man. This was strenuously denied by Jyotirmoyee Devi and many others, but apart from the defence witnesses, four at least of the witnesses examined by the plaintiff proved that Akshay Kumar Roy was known as a lunatic and that occasionally he went off his head. It seems extraordinary that such a man should be sent out on such a quest. There is no evidence whatever regarding the places he visited, nor the persons of whom he made enquiries. Never a letter was written to him, nor by him during the course of his enquiries. In fact, apart from the oral evidence of these witnesses there is nothing to show that Akshay Kumar Roy did indeed go out on any quest. All these events are supposed to have happened within six months of the return of the party from Darjeeling. During this period Satyendranath Banerjee was frequently in Jaidebpur and was in constant touch with the people of Jaidebpur. Yet there is no reference to any of these incidents in his diary—a diary which was opened simply for the purpose of noting facts in connection with Ramendra Narayan Roy's death. There was also no reference to any of these details in the letter written by Rani Satyabhama Devi to the Maharajadhiraj of Burdwan in 1917. If all these details to which Jyotirmoyee Devi and her nephew and son-in-law deposed were, in fact, true, it is easy to understand that Jyotirmoyee Devi must have been convinced that her brother was still alive. She stated clearly that after enquiries were made by Akshay Kumar Roy she believed firmly that her brother was alive. She stated that her aunt Kripamoyee Devi was also firmly convinced that Ramendra Narayan Roy was still alive, and Sati Nath Banerjee deposed that he was despatched to make enquiries throughout northern India by Kripamoyee Devi on five or seven occasions. If there is any truth in this evidence, Jyotirmoyee Devi and Kripamoyee Devi must have been absolutely convinced that Ramendra Narayan Roy was alive. Yet in her evidence in the Probate Suit arising out of the Will of Kripamoyee Devi, Jyotirmoyee Devi deposed that after the death of the Chhoto Kumar, Kripamoyee Devi said: "There is no one left in my family. It has become extinct. I shall not stay in this house any more." Saying this she went away to Benares. This evidence was given in 1920 before the return of the plaintiff. In March, 1916 Jyotirmoyee Devi had written to Bibhabati Devi a letter in the most affectionate terms in which she suggested that Bibhabati Devi and she should live together, and she said in that letter: 'what else have we to remind us of our dead brother except yourself?' It seems extraordinary that Jyotirmoyee Devi could write such a letter or give such evidence as she did in October, 1920, if, as she now says, she was absolutely convinced that Ramendra Narayan Roy was alive. In my opinion, the evidence with regard to the alleged anonymous letters, to the Madhab Bari sannyasi, to the quest by Akshay Kumar Roy is false evidence and no such incidents took place.

With regard to the alleged searches throughout India referred to by Satinath Banerjee, no explanation is offered why no letter was written by him on those occasions, and no indication is given by him as to the persons with whom he had conversations or of whom he made enquiries. I do not believe that such trips were made, or rather, that such trips, if they were made, were made for the purpose of finding the late Ramendra Narayan Roy.

ALLEGED REVELATION BY MOUNI SANNYASI IN 1917

As I have stated before, there was in 1917 a widespread rumour to the effect that Ramendra Narayan Roy was alive. Jyotirmoyee Devi deposed as follows: "The rumour that the second Kumar is living was current till his return. At one time it was very strong. We got all sorts of informations confirming it, and 1½ or 2 years after that, the rumour became very strong. 4 or 5 years before the plaintiff's return a sannyasi, vowed to silence, arrived at the Rajbari. I brought him to my house. My elder sister and grandmother and my children were present when he came. I asked him what he knew about the truth of the rumour that the second Kumar was alive which we were hearing. He wrote his answer in pencil on a paper in Bengali. I saw it. What I read filled us with joy. My grandmother gave to the sannyasi a shawl and gold-mounted *rudrakhya* (rosary)." She was supported in this story by Jitendra Chandra Mukherjee and by Sati Nath Banerjee. In the letter written by Rani Satyabhama Devi to the Maharajadhiraj of Burdwan, no mention was made of this sannyasi, and no mention was made of the fact that she was told definitely that Ramendra Narayan Roy was still alive. The letter merely stated that there had been a rumour for about two months, and that the rumour was afloat in different districts such as Dacca, Faridpur, Barisal, Mymensingh, Rangpur, Dinajpur, Comilla, etc., and that many people were daily wanting informations from her regarding the matter. Her omission to mention the revelation made by the *mouni* sannyasi in that letter is noteworthy, but even more so is the evidence of Satinath Banerjee on the subject. He deposed: "The *mouni* sannyasi (speechless mendicant) came some 4 years before the Kumar's return. I can't give the year. I don't remember to which province, Bengal or United Province or Madras, he belonged, or how then he struck me. I can't say why the paper he wrote upon was not preserved. I don't remember if he was asked how long before he had met the plaintiff before, or where he had last seen him. I don't remember whether any inquiries were made of him to get a clue to the Kumar's whereabouts. Perhaps no effort was made to ascertain the truth or otherwise of his statement."

ORIGIN OF 1917 RUMOUR

In considering all these stories of information received regarding the movements of Ramendra Narayan Roy, it should be borne in mind that after the plaintiff arrived in Dacca both parties were able to trace the sannyasi Dharam Das Naga with very little difficulty. It seems to me certain that if the name of Dharam Das Naga or any other sannyasi had come to light during these years, that sannyasi could have been found without difficulty. It seems also certain that if anybody had seen Ramendra Narayan Roy wandering with sannyasis and had conversed with him or his companions, that person would have known the names of Ramendra Narayan Roy's companions. Nobody pretended that the names of Ramendra Narayan Roy's companions were ever divulged to the people at Jardebpur. I am not satisfied that the *mouni* sannyasi in 1917 wrote anything upon a piece of paper as stated by Jyotirmoyee, nor am I satisfied that it was he who started the rumour in that year. The rumour did start, it is true, and it may be true that the rumour started after the visit of the *mouni* sannyasi and on account of his visit. But there is no convincing evidence to show that the *mouni* sannyasi himself ever made any statement regarding Ramendra Narayan

Roy I am satisfied from the evidence on record that apart from the rumour in 1917, no definite information ever reached the family at Jaidebpur regarding the alleged survival of Ramendra Narayan Roy. It may be that rumours of his survival were afloat. It is extremely difficult to judge from the evidence on record when those rumours came into existence. A large number of witnesses have deposed that there were such rumours, but the unprejudiced independent witnesses are extremely vague as to the time when those rumours arose. Except for the letter of Rani Satyabhama Devi in 1917 and the reply thereto of the Maharajadhiraj of Burdwan, there is no reference in any letter or document to show that any rumour that Ramendra Narayan Roy was alive was in fact current. It may even be that the witnesses who deposed in 1933 and 1934 were referring to the rumour which was current in 1917 when they said that the rumour spread after the supposed death of the Kumar. But whether there was a vague general rumour or not, that rumour—if it existed—could be no evidence that Ramendra Narayan Roy was in fact alive. The rumour in 1917 is interesting in so far as it shows how ready the people of the locality were to believe that Ramendra Narayan Roy was alive. They were in a mood to accept a claimant, and if any one was inclined to put forward a claim, he must have realised from the experience of that year that an impostor bearing any resemblance to the late Ramendra Narayan Roy would have a reasonable chance of success.

My conclusion with regard to the events of 1909 to 1920 in Jaidebpur is that the story of *kushaputtahka*, receipt of anonymous letters, post card, the visit of Madhab Bari sannyasi and the searches of Akshay Kumar Roy and Sati Nath Banerjee are all fictitious. There was undoubtedly a rumour in 1917, and there might have been a rumour in earlier years to the effect that Ramendra Narayan Roy was alive. The origin of that rumour is unknown to us. That rumour cannot be taken as proof that Ramendra Narayan Roy was in fact alive.

THE ARRIVAL OF THE PLAINTIFF IN DACCA AND THE PREFERMENT OF HIS CLAIM

In January, 1921, the plaintiff sat in front of charcoal fire on the Buckland Bund, Dacca. He was dressed (or rather undressed) like a sannyasi, with ash besmeared body, and long matted hair, he behaved like a sannyasi, he made no claim to be anything but an ordinary wandering sannyasi.

On the 4th of May, 1921, the plaintiff announced to an expectant crowd that he was Ramendra Narayan Roy, second Kumar of Bhowal.

What had happened in the interval to produce this change? This is obviously a matter of the utmost importance, and one deserving the most careful consideration. Yet in his judgment the learned trial judge does not discuss the matter at all beyond referring to the dramatic nature of the revelations of the 4th of May.

Did the plaintiff arrive in Dacca, unaware of his own identity? Did he visit Dacca by accident, just as he visited a hundred other towns and villages in the course of his wanderings? Or did he set from from Braha Chhatra with the fixed intention of visiting Dacca and finding out about his family? Did he intend to reveal his identity as soon as he discovered who

he was? Or did he intend to conceal his identity as long as possible, and to rejoin his *guru* and take the final vows of a *sannyasi*?

These are all questions which require to be answered, and the answers must be made to reconcile with the conduct of the plaintiff and the other witnesses examined by him. It is not sufficient to say that the only evidence regarding the events of these months is the evidence of the witnesses examined by the plaintiff, and that, therefore, that evidence must be accepted. No one but the plaintiff himself knows what went on in his mind, none but he and his supporters know what discussions and arguments took place. The story of the plaintiff must be examined in the light of the evidence offered, and it must be considered whether that story is a reasonable and probable one.

In this connection, too, the fact that in his memorial in 1926, he gave an entirely different account of the circumstances in which he declared himself to be Ramendra Narayan Roy, must be taken into consideration. It is not necessary to set out in full the account given in the memorial. It is sufficient to record that Mr Chatterjee, counsel for the plaintiff, conceded that that account gave an entirely wrong picture. It is not merely that mistakes in detail had crept into the account—the whole picture was entirely wrong.

ABANDONMENT OF MEMORIAL VERSION OF PLAINTIFF'S RETURN

The learned trial judge has noticed that the account given in the memorial was 'nonsense and untrue', but disregarded it as the effusion of some Sub-Deputy Magistrate. I am unable to dismiss this solemn document in quite so airy a fashion. The memorial was not drawn up hurriedly, on the spur of the moment, by a man unacquainted with all the facts. It was drawn up after five years of discussion and agitation. The plaintiff was surrounded from the beginning by leading members of the Dacca Bar. The question whether he should adopt the method of a memorial to the Board of Revenue, or a suit in the courts, to recover his property, was carefully considered by his advisers. His supporters obtained the opinion of Sir Ashutosh Chaudhuri, who advised a suit in court, but they decided to adopt the memorial method first. They could not have rejected advice from such a source without anxious consideration and without the advice of other eminent lawyers. The memorial itself recites that Dwarkanath Chakravarty, a very eminent member of the Calcutta Bar, took an active part in drawing up the memorial. The memorial was presented by Langford James and argued by him before the Member of the Board of Revenue. It is inconceivable to my mind that a memorial drawn up in such circumstances could have been carelessly drafted. On the contrary, every word must have been carefully weighed, and every sentence discussed before it was finally approved. Why, then, was a false story given in that memorial? The suggestion has been made that the object of the plaintiff's adherents was to secure an order for enquiry from the Board of Revenue, and that consequently the story that was thought likely to appeal to the member of the Board was given in the memorial. Does this mean that the plaintiff and his adherents were prepared to place before the investigating authority whatever story would appeal to that authority irrespective of the truth? If so, we are entitled to assume that they would adopt the same attitude to the court as they did to the Board of Revenue. Obviously in presenting the memorial,

the plaintiff and his advisers must have entertained a hope that the Board of Revenue would undertake the enquiry prayed for. Are we to believe that the plaintiff hoped to convince the Board of Revenue of the truth of his case by offering evidence which flatly contradicted the story given by him in the memorial itself? The suggestion is absurd. The plaintiff must have intended to offer evidence in support of the memorial version to the Board of Revenue, and obviously, the witnesses examined in court are the witnesses whom plaintiff intended to examine before the Board of Revenue.

It seems clear to me that in 1926 the plaintiff believed that he would have the support of Jyotirmoyee Devi and her relatives for the version then given, and this single fact is sufficient to justify the court in regarding the evidence of these witnesses with the greatest suspicion. As a matter of fact, the memorial version was not given up in 1927, when the memorial was rejected. When Atul Prosad Roy Choudhury was examined on commission in March, 1933, the pleader who cross-examined him, presumably acting on instructions, put the memorial version to the witness as though that was the true version. We have been informed by Mr Chatterjee in the course of his argument before us, that there was a change in advisers to the plaintiff between the date of institution of the suit and the date of the plaintiff's examination in the witness-box. There are many details to confirm this statement, and it seems obvious to me that the memorial version was dropped when the new director took charge of the case.

Therefore, in examining the plaintiff's story and the explanations he offered we must bear in mind that in a solemn document praying for an enquiry into his claim, he had already given a story which is now abandoned as untrue.

PLAINTIFF'S PRESENT VERSION

The plaintiff asserted that during the years of his wanderings from Asighat in Benares to Braha Chhatra, he had full possession of his senses and his intellect, but unfortunately his memory of events prior to his arrival at Asighat was a blank. He had no idea of his race, his home or his family. All that remained of the past, apparently, was his ability to speak his mother tongue. He says, it is true, that he had spoken fluent Hindi from childhood, and that from the time he recovered consciousness in Darjeeling he spoke in Hindi to his rescuers. This version is not supported by Gopal Das, but the matter is of little importance.

Before Braha Chhatra, plaintiff was occasionally troubled at his inability to remember the past, and he used to wonder who he was and whence he had come. He used to tell the *guru* of these troubled thoughts, but the *guru* consoled him, saying that in the fulness of time memory would be restored to him. Neither the *guru* nor the other sannyasis gave him any hint as to his real identity. This was his state of mind when suddenly at Braha Chhatra he remembered that his native district was Dacca in Bengal. He at once told the *guru*, and the latter then told him that the time had come for him to return to his family and decide whether the ties of family and home were so strong that he would not take the final vows of a sannyasi. We are told that the *guru* knew where plaintiff's home was, but that he did not impart this knowledge to the plaintiff, as he assumed from plaintiff's announcement that plaintiff too had remembered this. It seems strange that

the *guru* did not question plaintiff about his home and family, to ascertain whether there are still any relatives to whom plaintiff could return. A single question would have revealed plaintiff's ignorance. However, the *guru* told plaintiff to go back to his people and to decide whether to revert to civil life or to become a *sannyasi*, and added that he, the *guru*, would wait one year for news of plaintiff. In spite of these instructions plaintiff did not go straight home to Dacca; he wandered away into the Assam Valley as far as Kamakhya in the district of Kamrup, and took a whole year to reach Dacca. He assured us that when he reached Dacca he was still entirely ignorant of his identity—and this, in spite of his alleged meeting at Rangpur with a man who spoke to him about his home and his family! There is no suggestion that during the year before his appearance in Dacca, plaintiff suffered from any mental defect other than the loss of memory with regard to events before 1909. It seems strange that a man who was on a quest to discover his own identity, his own family and his own home, should hold conversations on these topics and yet not realise what they meant.

OBJECT IN RETURNING TO DACCA

However, if we accept his version, he arrived in Dacca, ignorant of his own identity, but determined to find out who he was and to find out what was the attraction of family ties. So he took his seat on the Buckland Bund, made no enquiries and asked no questions. According to his own account, he made no attempt whatever to find out anything about his home or his family. Fate took pity on him and provided him with the information for which he did not take the trouble to seek. Passers-by observed in his hearing, how remarkable was the resemblance he bore to Ramendra Narayan Roy of Jaidebpur. Plaintiff's story is obscure at this point, but it seems to be his case that from conversations so overheard he realised that he was Ramendra Narayan Roy. In spite of this discovery, he continued to sit on at the Bund. He made no enquiry about his relatives or his home; he made no attempt to discover whether any of his relatives were still alive, or who was in possession of his estates.

VISIT TO KASIMPUR AND JAIDEBPUR

His avowed object in returning to Dacca was to test the strength of worldly attractions and family ties, but even when he had discovered his identity, he made no attempt to subject himself to the test. He continued to sit patiently at the Bund, until Atul Prosad Roy Choudhury invited him to Kasimpur in the first week of April, 1921. The defence admitted that plaintiff was invited to Kasimpur, but the evidence of Atul Prosad Roy Choudhury is that plaintiff was invited as a *sannyasi* in the hope that he would perform a sacrifice known as *putreshtijana*. The plaintiff strenuously denies that he was invited as a *sannyasi*, and asserts that he was invited because he had been recognised as Ramendra Narayan Roy of Jaidebpur. Yet, it is now admitted that during a stay of a week or ten days at Kasimpur, plaintiff slept under a *Kamru* tree in the open and was treated as an ordinary *sannyasi*. He does not say that he was greeted by Atul Prosad Roy Choudhury or by the uncle Sarada Prosad Roy Choudhury as Ramendra Narayan Roy. He does not explain what was the nature of the invitation to him which persuaded him to go to Kasimpur. Was he invited as Ramendra

Narayan Roy? If so, did he accept the invitation as Ramendra? If not, why did he go at all? If he was accepted as Ramendra Narayan Roy, why did he not demand to be treated as such? It seems impossible to reconcile plaintiff's treatment at Kasimpur with any theory that plaintiff had been recognised by the Kasimpur Zemindars, and that the recognition had been communicated to plaintiff. If the alleged recognition had not been communicated to plaintiff, some other pretext for the invitation, some pretext consistent with plaintiff's pose as a naga sannyasi, must have been given. But this is strenuously denied by plaintiff. From Kasimpur plaintiff went to Jaidebpur on an elewhant, it is true, but not in triumph as described in the memorial. At Jaidebpur he stayed at the Madhab Bari and behaved just like any other naga sannyasi. He went to Jyotirmoyee's house on the evening of the day following his arrival there, but though he met Jyotirmoyee and her relatives, he did not greet them as his relatives nor did they greet him as a relative. He behaved as though he was a perfect stranger to them. Next day he went again to Jyotirmoyee's house to dine. We are told that Jyotirmoyee commented on his likeness to Ramendra and that plaintiff brusquely denied any relationship with the family, but that he was unable to control a gesture of affection to the aged grandmother who was present, and he burst into tears when shewn old family photographs.

If the account given of this day is true, he must have realised that he was recognised. Yet he went away, saying that he was going to Nangalbundh *mela*. He left the district without telling the people at Jaidebpur of his intentions and went to Sitanath in the district of Chittagong. He returned to Dacca a few days later and resumed his seat on the Buckland Bund. What his object was in so doing, he made no attempt to explain. If he wished to test the strength of family ties, he might have gone openly to Jaidebpur.

STRANGE BEHAVIOUR

During this stay at Buckland Bund, a messenger came to him with a message from Jyotirmoyee Devi. That messenger is dead, and the plaintiff has not mentioned the incident. Consequently, we are left in the dark as to the conversation which took place between the plaintiff and the messenger. We know, however, from Jyotirmoyee Devi's evidence that the messenger carried an invitation to come to Jaidebpur and that that invitation was rejected. If Jyotirmoyee Devi and other members of the family had recognised the plaintiff as Ramendra Narayan Roy, as they now swear, it seems probable that the message made some reference to the recognition. It seems to me clear that if there were any truth in the account of these days given by plaintiff's witnesses, the plaintiff must have realised that he had been recognised. How then can we understand the visit to the house of Saibalini Devi in the last week of April? Jyotirmoyee Devi had come to Dacca after the plaintiff had refused her invitation to go to Jaidebpur, and had persuaded Saibalini Devi to invite the plaintiff to her house to be viewed and inspected by other relatives. Again, the defence evidence was that plaintiff was invited in his capacity as a sannyasi, whatever ulterior motive Jyotirmoyee Devi may have had. Again, plaintiff denied that he was invited in his capacity as sannyasi, but again he offered no explanation why he was invited and why he accepted. If he was invited as Ramendra Narayan Roy, why was he not greeted as such and treated as such? Yet the admitted fact is that he was treated as a sannyasi and was not addressed by anyone.

as Ramendra Narayan Roy Thereafter, on April 30th, the plaintiff was again persuaded to visit Jaidebpur On what pretext he was invited is not divulged He asserted that he was still denying that he was in any way related to the family the other witnesses do not assert that they had yet made up their minds to treat him as Ramendra Narayan Roy He was still not addressed as such Until he arrived at Jaidebpur on this occasion, he had studiously followed the customs of naga sannyasis, sleeping out in the open in front of his charcoal fire But on this occasion, though still denying his identity, he consented to sleep inside Jyotirmoyee Devi's house No explanation was offered for this abandonment of habit Plaintiff still continued to pose as a sannyasi, he still smeared himself with ashes and still denied his identity But on the third day of his visit, while still denying his identity and still wandering about naked and behaving like a sannyasi, he allowed himself to be persuaded not to besmear himself with ashes On this day he angrily refused to allow Jyotirmoyee's son to examine the marks on his body, but on the fourth of May, 1921, in the morning, he allowed them to examine his marks, though he still denied vigorously any relationship In the afternoon, he decided to reveal himself to Jyotirmoyee Devi and others, so he left them behind in the verandah and took his seat in an armchair which had already been placed on a platform in the compound in anticipation of this moment There he awaited patiently a catechism from some unknown relative, regarding his name, his father's name and the name of his wet nurse The plaintiff has offered no explanation of his strange conduct in going to live in Jyotirmoyee's house while still posing as a sannyasi, in abandoning the habit of smearing himself with ashes while still denying his identity, or of his strange method of revealing his identity to his supposed sister Not only did he offer no explanation of this strange conduct, he denied the details He asserted that he revealed his identity on the day following his arrival at Jaidebpur

The learned trial judge remarks that the plaintiff passes over these days as unimportant, but that seems to me an inadequate explanation of his refusal to explain this extraordinary conduct

REMARKABLE CONDUCT OF JYOTIRMOYEE DEVI

But if plaintiff's conduct during this period is difficult to understand, it is simplicity itself compared with the conduct of Jyotirmoyee Devi To appreciate her conduct, it is essential to bear in mind her definite case that she had been convinced for years past that Ramendra Narayan was alive She was a devoted sister on whose mind was indelibly printed the picture of every mark on her brother's body She remembered the exact tooth which was broken she remembered the scar on his arm caused by the playful scratch of a tiger cub as well as the more serious scar caused by a carriage wheel accident Though a *pardanashin* lady, she had visited the haunts of sannyasis at Benares and elsewhere to make enquiries about her missing brother She had sent her son-in-law Satinath on many expeditions to north-west India to search for Ramendra She had received confirmation of her belief in his survival so often that she knew that he was alive The news she had been receiving during these years of absence was always news of her brother wandering with sannyasis There was nothing strange, therefore, in the idea of her brother being in the garb of a sannyasi

NO MATERIAL CHANGE IN APPEARANCE BETWEEN PLAINTIFF AND KUMAR

It is the case of the plaintiff and his adherents—a case emphasised and insisted upon—that the plaintiff on his appearance in 1921 was exactly the same in appearance as the Kumar who had gone to Darjeeling in 1909. Ordinarily there is not very much change in a man's appearance between the ages of 24 and 36, but in exceptional cases there may be great changes. Slim men may become stout, stout men may lose their excess weight. Men who were previously clean shaven may grow beards and moustaches to hide their features. Similarly, men who previously grew beards or moustaches or both, may decide to be clean shaven in the interval. A man might be horribly disfigured as a result of some terrible accident. All such changes may suffice to serve as a thin disguise. If a man returned home after 12 years and had changed in one of the ways described, his relatives and the friends of his youth might be excused for passing him without recognition. But this would only happen if he was not expected. If his return was expected, and if he appeared to an old friend of his youth, with only slight superficial changes in appearance, and if that old friend was aware from before of the identity, recognition would be almost instantaneous. In the present case there was practically no change. We are assured that in height and in build the plaintiff in 1921 was exactly what Ramendra Narayan Roy had been in 1909. His complexion was the same, his moustache the same, and the colour of his hair was the same. The shape of his nose had altered, it is true, but to the fond eyes of Jyotirmoyee Devi even that was the same. The colour of his eyes was the same even his mannerisms, his gestures, his voice and his walk were the same.

The only difference in appearance between the Kumar of 1909 and the plaintiff of 1921 was that the latter was almost naked, he had grown long hair and a beard, and he was besmeared with ashes. In every other respect, we are assured again and again he was exactly the same. The fact that he was almost naked would not prevent recognition. It is clear from photographs *Exts XXXVIII, XXXIX and LVI* which have been exhibited in this case that gentlemen of the standing and habits of the Bhowal Zemindars were frequently seen naked to the waist, in the privacy of their own homes or when relaxing among their intimates. The covering of ashes might serve to prevent recognition only if a casual glance was given. The hair was long and matted, it is true, but it was not besmeared with ashes and was naturally taken well back from the face. The only change which could in any way have concealed the identity of the plaintiff was his beard, and it is obvious that the mere addition of a beard would not suffice to disguise him successfully, if his identity was already suspected and if he was examined carefully. In short, if the case made out in court had any resemblance to the truth, the plaintiff would have been recognised by Jyotirmoyee Devi and her grandmother and other relatives, the very moment their attention was drawn to him as being suspected to be the missing Ramendra.

STILL NO RECOGNITION AT FIRST MEETING

Bearing this in mind, let us consider the conduct of Jyotirmoyee Devi and her relatives. When the plaintiff first visited Jaidebpur, Jyotirmoyee

Devī heard of his arrival and heard something from her son as to his suspected identity. She invited him to her house. The visit is best described in her own words. "The same day at dusk the sannyasi came. I was then doing *sandhya* (worship) at the *ghat*. Budhu came and informed me that sannyasi had come. I came and found the sannyasi seated in the southern verandah of my house. He was seated on a *pati* (mat). My daughters and my sister's daughter Keni and my grandmother, and elder sister's sons—all her sons and Gobinda Mukherjee were near him. The sannyasi sat, his head bowed down, and looking in a downcast sidelong way. That way of looking at once reminded me of Mejo's way of looking at people. That excited my suspicion and I started looking at him, scrutinising his features, eyes, ears, lips, figure, hands and feet, the contour of the face. The others present also looked at him and had my suspicions. It was dusk then. We could not see the colour of the eyes. We had some conversation with him in Hindi. It was only a few words in Hindi. I asked, "তুমি কয় রোজ হিঁয়া রহেগা" (How many days will you stay here?) He said "হায় কাল ব্রহ্মপুত্র স্নানমে চলা যাযগা লাঙ্গলবন্দ" (I shall go to-morrow to Langalband for a bath in the Brahmaputra). I gave him fruits to eat and some soft "সব" (*sar*) (condensed milk) and some hard "সর" (cream). He took nothing except the hard "সব" (cream). After taking this he left. I noticed his gait. It was like that of the second Kumar. I noticed his height then. It was the second Kumar's height but he seemed slightly stouter,—slightly, like the difference between 19 and 20—a shade stouter. His face that day was smeared with ashes. Before the second Kumar went to Darjeeling he was very fond of hard *sar*. He used to take 3 hard *sars*, each from a seer of milk. He is fond of it still. He had this habit from before he went to Darjeeling and even now he prefers *sar* to anything else. After he left, we talked about the sannyasi and we decided to call him and feed him the next day and see him in better light during day."

From this it is clear that they examined the plaintiff carefully, with the thought in their minds that he might be Ramendra Narayan—and *did not recognise him*.

A SECOND MEETING ONLY A STRONG SUSPICION

In view of the case that there was no material change in the plaintiff's appearance, this failure to recognise him is extraordinary. However, the good lady had still an open mind. She was not satisfied that the sannyasi was not her brother, so she invited him to dinner again on the following day. Jyotirmoyee's description of this visit is as follows. "That day at 12 or 12-30 P.M., he came in a Raj *palki* carriage in the company of Ram, son of Jogendra Banerjee, Secretary. Ram also came in with the sannyasi. I and my grandmother and those who were present on the previous day all assembled there. The plaintiff sat on a big *chauki* in my son's *Baithakkhana*. Gobinda Mukherjee sat at the edge of the *chauki*, and I and grandmother sat on chairs and the rest stood. The sannyasi asked my grandmother in Hindi to sit on the *chauki*. She moved and sat at the edge of the *chauki*. Then the sannyasi said, 'উঠকো বৈঠ' (sit up). All that he said that day was in Hindi. My grandmother sat up and faced the sannyasi. He asked her to come near and drew her to him by holding her leg. The sannyasi then

said 'বুড়িকা বড়া দুঃখ হায' (The old woman has suffered much) I am giving his words as far as I can recollect Then the sannyasi pointed to my two daughters and asked me 'এই তোমরা দোনো বেটা হায' (These are your two daughters?) And pointing to my son said 'তোমরা বেটা হায' (your son?) And pointing to my sister's son said 'তোমরা বহিনকা বেটা?' (your sister's son?) And pointing to Keni, my sister's daughter, said 'এ কোন হায' (who is this?) I said 'বড় বহিনকা বেটা হায' (she is the daughter of my eldest sister) As I said that, the sannyasi burst into tears Tears trickled down his cheek Keni was then a widow Keni was then 13 or 14 years old

As the plaintiff wept, Tebboo held before him a photo of the second Kumar—a photo which was either the photo—*Ex L* or one like it As Tebboo held the photo—he did so at a moment when the plaintiff had ceased weeping—the plaintiff began to weep again Then Tebboo showed him a photo of the Chhoto Kumar As he did that the plaintiff wept more and lay down sobbing, his arms held thus (shows arm covering the eyes) Ram was present then Ram then said something Ram knew the second Kumar very well before he went to Darjeeling

Q—What did Ram say at that moment? (Objected to Allowed)

A—He is no doubt the second Kumar Didima, don't let him go

As the plaintiff wept I said 'তোমত ভাগী হায, তোম এতনা রোত কিসিকা আস্তে?' (you are but an ascetic, who is averse to all wordly attractions, why are you weeping so much?)

He said 'হাম মায়ালে রোত হায' (I am weeping through attachment)

Then I said 'তোম ভাগী হায, তোমকা কিসিকা আস্তে মায়?' (You are an ascetic, what for is this attachment of yours?)

To that he made no answer

I said then হামবা মেজলা ভাই দারজিলিং বাকে মব গিয়া শুনাখা, আওর উনকা যব যুকানকে ওয়াস্তে শ্মশানমে লেগিয়া, তব বহত ববখা হ্যা, আওর বহত বি তুকওন হ্যা, অসিকা আস্তে উনকে শ্মশানমে বাখকে সব আদমি লোক দোসবা জাযগামে চলাগিয়া। ফের লোটকে আকে উনকে শব নেহি মিলা। দারজিলিং যে লোক গিয়াখা অই লোক হায়াসে আকে কৈ কৈ বোলাখা উনকে যুকায় কৈ কৈ বোলাখা যুকায় নেই।

(I heard that my 2nd brother died on going to Darjeeling and when he was taken to the cremation ground for cremation, there was heavy rain and storm On that account all the persons leaving him behind in the cremation ground, went away to another place On coming back again his dead body could not be found Of the persons who went to Darjeeling, on coming back home some said that he was cremated and some said that he was not cremated)

Before I completed my sentence he said 'নেই নেই বুট বাত হায। যুকায় নেই ও জিন্দা হায' (No, no, it is a lie, not cremated, he is alive) Then he looked at me and I then noticed his eyes They were 'brownish' as my second brother's were Then I asked him in Bengali 'তোমার সমস্ত অবববই মেজ ভাইয়ের মত দেখি তব তুমি কি সেই?' (I observe all of your features like those of my second brother, then are you that man?)

To this he said 'নেই, নেই, হাম তোমার কৈ নেহি হার'।

(No, no, I am none to you)

I put my question in Bengali to see if he could understand Bengali. He took his meal that day at my house. I noticed that his index finger was sticking out as he was taking his food and as he lifted the food into his mouth, he was putting out his tongue a bit.

I noticed his features. I noticed his Adam's apple. I noticed that his hair was red—*kata* and eyes brownish. I noticed his eyes, ears and nose and cut of the face and mouth. I noticed his teeth—they were like those of second Kumar—even and smooth and beautiful. I noticed his hands and his finger nails—every one of the finger nails. I noticed the palm, and the back of the hands. I noticed his leg and feet and toes. I remembered what sort of nails and toes my second brother had. How could I forget? we had lived together from our infancy. His whole body, arms and legs, and face and even the eye lids were smeared with ashes, but the nails were free from the ashes. His hair was long. He had a beard now. The second Kumar did not wear a beard before he went to Darjeeling. His utterance on this day was indistinct. His voice was that of the second Kumar. My other relatives present then spoke to him that day. I do not remember what they said. After his meal was over we took our meal and when we finished our meal it was three. The sannyasi seemed anxious to go to Dacca on his way to the *Astami Snan* (অষ্টমীস্নান) (taking bath on the *Astami* (8th lunar day)). My suspicion that he was my brother had grown very strong and I wanted to keep him for a few days to see him more closely and to make sure if the old marks were on him. I asked him in Bengali 'তুমি কয়দিন ঢাকায় থাকবে' (for how many days will you stay at Dacca?).

He answered in Hindi 'some ten days'. I had stopped talking Hindi as soon as I could see he could understand Bengali. Since then I spoke Bengali."

According to this version, even after a long conversation in daylight, there was still no recognition but a suspicion which had grown very strong.

Thereafter, Jyotirmoyee Devi sent a message through her son to the plaintiff at Dacca. The exact wording of the message is unknown, but it seems to have contained an invitation to return to Jaidebpur, which the plaintiff refused.

The next step taken by Jyotirmoyee was to visit Dacca and to arrange for the plaintiff to be invited to the house of Sarbalini Devi to be inspected by other relatives of the family. The visit was a very brief one and is described in these words: "He came a little before dusk—the sun was then down and lights not lighted. Himangshu, also called Kala, my son, and Jiten Bhattacharjee brought him. The sannyasi stayed for 15 or 20 minutes. We all saw him. We all said that he looked like the second Kumar. The sannyasi spoke nothing. He was smeared with ashes that day. As we were saying to each other that he looked like the second Kumar, he left."

PLAINTIFF'S NEXT VISIT TO JYOTIRMOYEE DEVI'S HOUSE

After returning to Jaidebpur, Jyotirmoyee sent her son again to invite the plaintiff to visit her. Again we are left in ignorance of the contents of the message, but this time the plaintiff accepted the invitation. He arrived at Jaidebpur on the 30th of April, 1921. Nobody greeted him as Ramendra when he arrived, there was no conversation of importance that night; the only incident worthy of record was that the plaintiff wept when shewn

family portraits The description of the events of the next four days given by Jyotirmoyee Devi is as follows "Next day, before daybreak, at early dawn the sannyasi went to the river Chilla and came back smeared with ashes That day certain pleaders had come from Dacca in connection with a suit of Hemu and Keni These pleaders and secretary Jogendra Banerjee took their meals at my house that day The plaintiff took his meal in the *nirmishya* kitchen (widow's kitchen untainted by meat) and sat in an adjacent room The room opens into a verandah in which the above people sat at their meal The pleaders finished their meal and went out The secretary Jogendra Babu came where the plaintiff was seated The plaintiff then said
 মেরা বৈঠকখানা সাঁকা কর দেও' (clean my drawing room)

That made everybody suspect the more—why did he say that? The Chilla is at the northern limit of Jaidebpur and some distance from my house It is close to Phani's house My house is at the southern limit of Jaidebpur That day I told the sadhu not to smear his body with ashes I said that as I could not see his complexion He said 'কৈও' (what?)

Next day he came smeared with ashes He used to bathe thrice a day I told him 'I forbade you to put ashes on your body and still you did it? You must not do it to-morrow'

Next day when he went out to bathe I sent a man with him On the two previous days he had gone alone Ananda, his former *Khansama*, and Nagendra Bhattacharjee, son of Surjya Doctor, our *Purohit* (priest) were the two persons who went with him when he went to bathe That day he came back after his bath, but without smearing his body with ashes

Then I saw his complexion It was the second Kumar's complexion as of old and seemed better still on account of *brahmacharyya* (asceticism) Then looking at his face, cleaned from ashes, he looked like Ramendra himself I noticed his eye-lids darker than his complexion I saw the mark left by the carriage wheel on his leg, and I saw the rough and scored skin at the wrists and on the insteps The relations, I already named, my grandmother and the rest also saw him and they recognised him just as I did Many neighbours, male and female, were present then Those who knew the second Kumar, such as Kulada Sundari, her daughter Magna, my aunt Ananta Kumari Devi, Mokshada Sundari Devi who has deposed and who is *mami* (aunt) to Akshay Ray, Babu Subodh Mukhati's grandmother, and Prafulla Mukhati's mother and many others whom I can name, recognised him Abani Banerjee of Secretary's office, Prasanna Banerjee who is dead, Lala, brother of Magna aforesaid, and many officers of the Rajbari and many neighbours all came and recognised him Tebbboo was there Tenants who live near about also came

Q—What did they say, if you heard it? (Objected to)

A—They said 'He is the second Kumar'

To Court—These tenants numbered not less than 100 or 125

This day I tried to look for all the marks on the second Kumar's body to which I have deposed I asked my son to look for these He tried to look, but the sannyasi would not let him

Next day Budhu tried again to look for the marks That day the plaintiff did not seriously object My son and Jabboo saw them, I told them where to look for the marks I asked them to look for the mark left by the abscess

on the head, the broken tooth, the tiger claw mark, the abscess mark below the waist. They got these marks. They saw the scored skin and felt the skin and saw it was rough like the second Kumar's. My grandmother and the rest I named were present. At this I directed the looking for the marks there, and the examination took place in my presence. This took place inside the room on the west of the verandah. It was then about 7 A.M. No outsiders were present then.

Q—Why did you look for the marks if you recognised him?

A—I did so, as the matter was very serious. Considering our family we wanted to be dead certain, so that no question could ever arise in our minds.

I saw the second Kumar's nose. To me it seemed the same as before. Some said it had grown fatter and some said it was the same."

INSPECTION OF MARKS

"At about 7 a.m. the marks were examined. People began turning up at about 9 a.m. The plaintiff would sit at the verandah or in the courtyard at about 10 A.M., as his *sandhya* would be over about that time. Talking of that day I have been speaking of people (who?) began turning up at about 9. After he had performed his *sandhya* I spoke to him when people were on the courtyard and he in the western room. The members of our family were in that room. I said 'Your marks and appearance are like those of my second brother. You must be he. Declare who you are.'

He said 'No, No, I am not. I am nothing to you. Why do you annoy me? I will go away.'

I said 'You must say who you are.' I said 'You must say who you are', 'না বললে ভাল হবে না' (your refusal won't do—literally, if you don't tell, it will not be well with you).

Then I told my son to tell the people who had come that all the marks on second Kumar's body were on him.

Q—Did you say what would you do if he did not disclose his identity?

A—I don't remember. My son and sister's son told the assembled people within my hearing what I asked them to tell them—I was standing behind the *chuk* (bamboo screen).

Q—Is it true that you are falsely imputing to the second Kumar the marks that are on the plaintiff?

A—It is not true. That day my brother, the plaintiff, sat among the tenants and they insisted upon his telling them who he was. He did disclose his identity that day. He did so in the afternoon. Till then I had not taken my food.

Adds—I had told him I would not take my food until he told us who he was. That day he sat among the tenants at 10 or 11 A.M. He announced his identity at about 4 or 5 P.M.

To Court—I told the plaintiff that I would not take food until he told us who he was, at about 12 A.M. when he came in for food.

After that he took his bath and food and then went out again. The tenants pressed the plaintiff to declare his identity both when (he?) was with them before he came in for his meal and also when he went back to them after his meal. He, the plaintiff, was in the *Chatan* facing my house when he declared his identity. I was then on the verandah to which one gets by steps from the *Chatan*. I could hear what he said. He was in the middle of the *Chatan*.

DECLARATION OF IDENTITY

Q—What did he say at this *atma parichay* (declaration of identity)?

A—Somebody put a question. I can't say who as there was a crowd. There were lots of women near me in the verandah. Somebody asked what his name was.

He said 'Ramendra Narayan Roy Choudhury'

He was asked his father's name. He said 'Raja Rajendra Narayan Roy Choudhury'

Then he was asked his mother's name. He said 'Rani Bilasmoni Devi'

Then he was asked his grandmother's name. He said 'Rani Satyabhama Devi'

Then somebody said everybody knows the names of the Raja and the Rani—who brought him up? He said 'Aloka'

Then the men present cried out, '*Madhyam Kumari Jar*' and the women gave *Joka* or *Uladdham* (cries of *ulu ulu*). The plaintiff was then seated in an easy chair and was reclining on it and he seemed to go into a fit. I rushed to him and the people made a way for me. About 2,000 to 3,000 men had collected there. When I thus went to the plaintiff Magna Mala came with me. I fanned him and put rose water upon his head. I did so for about 10 minutes. I sat in a chair there as I did so. As he recovered, it was proposed to take him to Matar's house where there was no crowd. He was taken there. The crowd followed him and were asked to desist."

INCREDIBLE CONDUCT A HOLLYWOOD PICTURE

This conduct seems to be absolutely incredible. I find it impossible to believe that a devoted sister, who had been searching for years for her missing brother, would fail to recognise him at the first meeting even if it was dusk. The picture of the second day's dinner party reads like a society novel, the well-bred hostess remarking to her guest that she saw a most remarkable likeness in him to her long lost brother, and then immediately changing the subject on receiving a surly disclaimer from the sannyasi.

The detail of Tebboo producing the photographs seems to me to have been invented by someone who had seen too many sentimental pictures from Hollywood.

If Jyotirmoyee Devi's evidence has any meaning, it shows that after two meetings with the plaintiff in Jaidebpur and one in Dacca, and after entertaining him for 3 more days as a guest in her own house at Jaidebpur, she was still not satisfied as to his identity. If a sister cannot recognise a man as her brother in these circumstances, it follows that either he is not her brother or he is changed out of recognition since she last saw him. Yet in the present case, we are asked to believe that there was no real change in appearance!

The justification offered for Jyotirmoyee Devi's conduct is that she recognised from the beginning how much was at stake and how essential it was to be sure beyond all possibility of error. But why should she have thought like that? To her, the only thing that mattered was that her brother had come back. She was not worried about the estate. I find it impossible to believe that she would have acted as she says she did. If the description of these days was a Bengali caricature of two cold-blooded reserved Englishmen meeting after a long absence, it might be good enough to raise a laugh, but as the description of a warm-hearted sentimental Bengalee lady meeting the brother whom she had been longing to see for 12 long weary years, it seems to me to be utterly incredible.

Even if Jyotirmoyee Devi saw the need for caution, why was the old grandmother silent? Was the grandmotherly instinct on which such emphasis has been laid, dormant? How is it that not a single one of the host of relatives at Jaidebpur who all recognised the plaintiff, was guilty of the least indiscretion or of the slightest indication of natural conduct? People saw plaintiff as he walked to the river and recognised him, so they say. People recognised him on the road, at the temple, at the bathing ghat—yet no one greeted him with a word of welcome, and no one showed the least curiosity as to the reasons for his long absence or for his return, and no body had the slightest desire to hear about his romantic escape from the funeral pyre. It might be possible to believe that one person would behave with excessive caution. It is ridiculous to ask us to believe that everybody behaved in this unnatural manner.

STORY ITSELF NOT CONSISTENT

The story is not consistent in itself. If the plaintiff was denying his identity on the fourth of May as he had done on the previous days, why was the armchair placed ready for him in the compound? If he decided to abandon the ascetic life and acknowledge his identity, why not do so simply and frankly to his own people? What induced him to take his seat in the armchair and await catechism? If the relatives were all convinced of his identity, why did they catechise him in the manner described? As he went out into the open and waited for the questions to be asked, it seems a fair inference to hold that he knew that such questions would be asked, and therefore, that he had been told about them.

OBJECT OF DEMONSTRATION

The whole description of these important days proves clearly the following three propositions, *viz* —

- (1) The description of the conversations and discussions between plaintiff on the one side and Jyotirmoyee and her relatives on the

other, given in the evidence, is wholly fictitious, and the true nature of those discussions has been suppressed

- (2) The scene in the compound of Jyotirmoyee Devi's house on the afternoon of the 4th of May was deliberately staged whispers had been circulated about Ramendra Narayan Roy's return, and tenants had been attracted, the armchair was placed in the open in anticipation, the chosen relative was instructed to ask the necessary questions, and the plaintiff was informed that questions were to be asked
- (3) The object of this performance was to convert the tenantry into a belief in the identity of the plaintiff as Ramendra Narayan Roy, it was not to satisfy the doubts of the relatives

The success of the scheme was immediately apparent. The simple villagers, attracted by the rumour that Ramendra Narayan Roy had returned, had gathered in the courtyard. They were told that the sannyasi bore on his body all the identifying marks which Ramendra Narayan Roy bore. They were witnesses to this seemingly wonderful revelation of memory of details of the past. Then as they stood there gaping with astonishment, Jyotirmoyee Devi rushed out and welcomed the sannyasi as her brother. It is not surprising that these simple rustics were convinced. In half a day, a thousand converts were obtained, a thousand ardent eager missionaries to spread the new gospel throughout the length and breadth of Bhowal. These missionaries believed sincerely in the gospel they went out to preach, and by their obvious sincerity must have convinced others. And what an attractive gospel for the tenants! The plaintiff announced his intention of holding the estate for the benefit of the tenants, if he should succeed in recovering possession. As he so plausibly explained, of what use was great wealth to one who had adopted the life of an ascetic? But apart from the appeal to self-interest and the transparent sincerity of the missionaries, the romance of the plaintiff's case, and the transformation of a *roué* into a saint must have made a tremendous appeal to the tenants of the estate. That it did so is obvious. Crowds flocked into Jaidebpur daily simply to have *darshan* of the plaintiff, and they did not come empty-handed. The astute advisers of the plaintiff pressed home the advantage. A monster meeting was arranged for May the 15th. Special trains were run. People came from all over the district. One estimate gives the numbers of the crowd that assembled as 50,000 (fifty thousand). When the people had assembled, the plaintiff paraded round the outskirts of the crowd, seated on an elephant with a son of Jyotirmoyee Devi. The president of the assembly called upon those present who accepted the plaintiff as Ramendra Narayan Roy to signify their acceptance. A roar of approval went up. The president then called upon those who did not accept him to say so openly. Not a dissentient voice was raised. In this way, by popular acclaim, the plaintiff was accepted as Ramendra Narayan Roy of Bhowal.

NEEDHAM'S REPORT TO LINDSAY

Immediately after the sensational incident of the fourth of May, a report was sent to J. H. Lindsay by F. W. Needham, Manager of the Estate under

the Court of Wards That report has been the subject of much criticism, and may be set out in full

Ex 59

"My dear Lindsay,

A very curious and extraordinary thing is happening here which has created a tremendous sensation throughout the Estate and outside

About 5 months ago a fair complexioned mendicant came to Dacca, it is reported, from Hardwar and stayed on the river side just opposite to Rup Babu's house, whence he was taken to Kasimpur by Babu Sarada Prosad Roy Choudhury, Zemindar of Kasimpur. He halted there for a few days. On his way back to Dacca he halted at Madnabbari at Jaidebpur, as other mendicants use to do. During his stay at Madnabbari he was taken to the house of Sri Jyotirmoyee Devi. Sri Jyotirmoyee Devi began to shed tears finding in the sadhu some likeness of her late 2nd brother (Kumar Ramendra Narayan Roy of Bhowal), and the sadhu too burst into tears. This raised some suspicion in the minds of the inmates of the house. After a photo of the second Kumar was presented to him he began to shed tears profusely, this strengthened the suspicion already created. He was then questioned by the inmates of the house as to who he really was, but without giving any answer he abruptly left for Dacca. For a few days nothing was heard of the sadhu.

A week ago the sadhu was again brought to the house of Sri Jyotirmoyee Devi by Babu Atul Prosad Roy Choudhury, zemindar of Kasimpur, and since then he has been staying there. On seeing the sadhu who is here now an impression has been made upon the minds of the people who are visiting him daily in hundreds that he is the late second Kumar. Tenants from different parts of the estate and also outsiders are daily coming in large numbers visiting the sadhu and giving out that he is the second Kumar. His presence has created a very great sensation in the locality.

Last evening the sadhu being questioned and hard pressed by several hundreds of tenants at last gave out that his name is Ramendra N Roy and his father's name was Rajendra N Roy and his nurse was Aloka Dhai. After this the sadhu fainted, and the numerous people present began to utter *ihullu-dham* and *jay-dham*. All the people who were present at the time were convinced that he was no other than the second Kumar, and the tenants present gave out that even if the estate could not accept him, they would stand by him and maintain his position. Finding the gravity of the situation, the inmates of the houses of late Sri Indumoyee Devi and Jyotirmoyee Devi informed Mohini Babu and Mr Banerjee that the sadhu had given out such and such things. They forthwith proceeded to the house of Sri Jyotirmoyee Devi and enquired about the matter. The sadhu did not meet them. They went there this morning again, but the sadhu sent intimation that he would see them this afternoon. The inmates of the house threatened the sadhu that he was incurring great responsibility by expressing in words and by conduct that he is the second Kumar, and that he cannot leave the place without giving the full particulars about his identity and past history. Under the circumstances a sifting enquiry about the sadhu is urgently needed. From morning crowds of people have been flocking to see the sadhu, and the

excitement and sensation is so great that the matter may take a serious turn unless necessary steps are taken promptly

I am awaiting your instructions in the matter,

Yours sincerely,
Sd F W NEEDHAM "

It is admitted that this report was drafted by Jogendranath Banerjee and Mohini Mohan Chakravarty, and it has been argued that it is the letter of persons who believed that plaintiff was indeed Ramendra Narayan Roy. The plaintiff's party contended that everybody at Jaidebpur accepted the plaintiff at first, but when instructions were received from higher officials, they changed their attitude.

In support of this theory, our attention was drawn to the statement of Jogendranath Banerjee in cross-examination that 'before the 8th May it became generally known that the Court of Wards officers were against the plaintiff, but not up to the 5th May inclusive.'

MOHINI MOHAN CHAKRAVARTY'S REPORT TO NEEDHAM

After the letter *Ex 59* had been despatched, Jogendranath Banerjee and Mohini Mohan Chakravarty succeeded in interviewing the plaintiff, and as a result of that interview, Mohini Mohan Chakravarty submitted the following report to F W Needham

Ex Z(203)

"In obedience to your verbal order I went last afternoon to the house of S_j Jyotirmoyee Devi with Mr Banerjee, Special Officer, Forest Officer, Head Clerk and other estate officials to make further enquiry about the sadhu who has been posing as the late second Kumar. We tried our best to get some definite statements from him as to his identity, but he declined to answer concerning his previous history. The sadhu definitely informed in the presence of the marginally noted persons that his name is Ramendra Narayan Roy, that his father's name was Raja Rajendra Narayan Roy and that his elder brother's name was Ranendra Narayan Roy, but he did not give reply to any question put to him concerning some past events in the life of the second Kumar. This refusal to reply is very significant. Matters have come to such a pass that the sadhu must establish his alleged identity, or steps should be taken to prosecute him for false personification. It is needless to say that if the sadhu is allowed to pose falsely as the late second Kumar with impunity, it will tell very seriously on administration of the estate, as the sadhu has by this time been able to

Babu Mohini Mohan Chakravarty
 „ J N Banerjee,
 „ Phani Bhushan Mukherjee,
 „ Gaurangahari Kabyatirtha,
 Sub-Registrar,
 Maulvi Nurul Haque, S I of
 Jaidebpur P S
 Babu RamChandra Bagchi,
 „ Ashutosh Das Gupta,
 „ Aswini Kumar Dutta,
 „ Jalad Chandra Mukherjee,
 „ Satinath Banerjee,
 „ Khutindra Ch Mukherjee,
 „ Sita Nath Mukherjee,
 „ Jogendra Chandra Datta,
 Nasu Pradhania,
 Asim Munshi of Mashakhali,
 Umedali Bhuya of Bhurulia

establish the sympathy of the tenants who seem to be thoroughly convinced that he is no other than the late second Kumar. Under the circumstances your kind instruction is solicited as to what steps should be taken.

It is reported that he has given out that he will prove his identity, if necessary, when time will come before the higher authorities.

(Sd) M M Chakravarty,

A M

6-5-21 "

ALLEGED CHANGE IN ATTITUDE OF ESTATE OFFICIALS

The change in tone between the letter *Ex 59* and the Report *Ex Z(203)* has been commented on, and has been urged in proof of the suggestion that instructions to disown the plaintiff had been received from higher officials.

Mohini Mohan Chakravarty and Jogendra Nath Banerjee were both cross-examined regarding the letter *Ex 59*, the questions taking the form "Q Did you believe that the statements in the letter were false?" If the answer given was "yes", the witness was asked why he included false statements. If the answer was 'no', it was argued that the witness believed in the truth of the plaintiff's claim. This sort of cross-examination is obviously useless, and the answers given do not mean either that the witnesses were giving false information to F W Needham in order to mislead him, or that they believed in the claims put forward by the plaintiff.

The letter *Ex 59* is certainly non-committal in tone and does not indicate that the writer was convinced that the plaintiff was an impostor. But, on the other hand, it does not indicate any belief in the plaintiff's claim.

It is conceded that no pressure had been brought to bear on Jogendra Nath Banerjee or Mohini Mohan Chakravarty before *Ex 59* was written, and that this letter was honestly written and contained a true account so far as was known to the persons drafting it. The letter certainly does not suggest that Jogendranath Banerjee was present at the declaration of identity, as some of the witnesses examined on behalf of the plaintiff now assert. Nor is it easy to understand why the letter should contain such inaccuracies as the statements—"the sadhu being questioned and hard-pressed by several hundreds of tenants at last gave out his name" and "The inmates of the house threatened the sadhu that he was incurring great responsibility by expressing in words and conduct that he is the second Kumar." If either of them was present at the meeting, they would have known that this was not the case, and there was no reason for making this false statement. The contents of the letter convince me that the two people who drafted the letter were not present at the meeting, and they were reporting only what they had learned from Khitindra Mukherjee (Jabboo) and Jalad Mukherjee (Budhu), the inmates of the houses of the late Sri Indumoyee Devi and Jyotirmoyee Devi referred to in the letter.

Khitindra Mukherjee and Jalad Mukherjee died before the case came on for hearing, and it was not possible, therefore, to have their versions of the message given to Jogendranath Banerjee and Mohini Mohan Chakravarty. I see no reason to disbelieve the account given by these two gentlemen, supported as it is by the letter, *Ex 59*.

PRETENDED DETACHMENT OF FAMILY MEMBERS

It is clear from this letter and from their evidence that on the 4th of May the members of Jyotirmoyee Devi's family were pretending to take a detached attitude. They represented to the authorities that they had had no hand in inducing the plaintiff to claim to be Ramendra Narayan Roy. They did not mention that they had induced the plaintiff to come to Jaidebpur on the second occasion, and they suggested, apparently falsely, that after the plaintiff had declared his identity they had tried to insist on his giving a full account of himself and his past history. It is clear from their evidence in court that they had staged the drama of the fourth of May, they had asked the questions, they had induced the plaintiff to assert his claim, and they had thereafter avoided questioning him regarding his movements during the years of his absence.

It seems to me that the despatch of Khitindra Mukherjee and Jalad Mukherjee to inform the Estate officials was part of the propaganda decided on.

As it is admitted that Jogendranath Banerjee and Mohini Mohan Chakravarty were not prejudiced against the plaintiff when they drafted the letter, *Ex 59*, there seems to me to be no reason for disbelieving the statement that "they forthwith proceeded to the house of Sri Jyotirmoyee Devi and enquired about the matter. The sadhu did not meet them. They went there this morning again, but the sadhu sent intimation that he would see them this afternoon."

It is not disputed that they saw the plaintiff on the afternoon of the 5th of May. Conflicting accounts of this meeting have been given. In the report, *Ex Z (203)*, it is stated that the plaintiff "did not give reply to any question put to him concerning past events in the life of the second Kumar." But a witness named Gourangahari Kabyatirtha, who is mentioned in that report as present at the interview, gave the following account of the conversation.

ALLEGED TEST RE BIRD-SHOOTING INCIDENT

"The incident was this —The sadhu declared his identity on that occasion. He was asked who he was, whose son he was, and whose brother he was, and so forth, and he answered the questions. Ashu Doctor said on that occasion 'I want to put a question. If he could answer that I would take him as the Kumar.' At this moment I was standing by the side of the sadhu and Ashu Doctor by me.

Then Ashu Babu put the question. I remember the question he put. He said দার্জিলিংকা দালানকা কার্ণিসনে একটে চিড়িয়া থা, ওটাকে কে গুলি কবেছিল ও কেনই বা তাবে তিরস্কাব কবেছিলেন (There was a bird on the cornice of the corridor at Darjeeling, who shot it down, and why did you take him to task?)

He framed his question thus. Hindi and Bengali. When he put his question, somebody said 'Let him give the name to Gouranga Babu before the question is answered.' Ashu Babu whispered the name to me—the name 'Biren Banerjee'. After that the sadhu said, 'Hari Singh'. Then I said, it did not tally with the name given by Ashu Babu. I said that Ashu Babu had given me the name 'Biren Banerjee' and that the names did not tally. There arose a commotion—what did it mean? Then the people said 'Call

Birendra Banerjee' When the plaintiff said 'Hari Singh', Ashu Babu said 'Hari Singh was then not at Darjeeling at all'

Birendra Banerjee was called He was asked who had shot the bird at Darjeeling He said 'Hari Singh', and added he did not know how to handle a gun

Then people wanted that Hari Singh should be called, but Hari Singh was not there, and the assembled people said, 'Ashu Babu is a liar' After that the meeting dispersed "

Dr Ashutosh Das Gupta denied the incident His evidence on the point is "It is not true that while we were at Darjeeling second Kumar or any one of our party shot any bird

"Q —Is it true that at Jaidebpur you asked the plaintiff who had shot the bird?—And that he gave a correct reply?

A —I never put such a question "

But in view of the unsatisfactory nature of his other evidence it is difficult to attach any importance to his denial

Birendra Chandra Banerjee has also denied the incident, as did Jogendra Nath Banerjee and Mohini Mohan Chakravarty On the other hand, the plaintiff's party examined a sub-inspector of police named Abdul Hakim Khan who was obviously very unwilling to depose on their behalf He proved that there was such a test question as described by Gourangahari Kabayathirtha It seems to me that there must have been such an incident, but not necessarily on the 5th of May, as none of the witnesses are definite on that point This ability of the plaintiff to give a correct answer to a test question will have to be considered when the question of mental identity is taken up

PLAINTIFF'S SUPPOSED ABILITY TO ANSWER TEST QUESTIONS

For the present, it is sufficient to note that according to the defence, the plaintiff in the early days of his claim would answer some simple questions readily, but would refuse to answer more difficult ones on some pretext or other This contention receives support from the evidence of Harendra Kumar Ghosh, a witness on whom Mr Chatterjee has placed great reliance The witness was a Magistrate and was on duty when he saw the plaintiff He described his interview in these words "When I saw the plaintiff I put questions to him at Budhu Babu's house I put these questions to convince myself of his identity with the Kumar

I asked 'আপনার স্ত্রীকে কি নাম ধরে ডাকতেন?' (Did you call your wife by taking her name?) And I asked 'ঢাকাতো খুব নাম কবা মেঠাই কি?' (which is the most renowned sweetmeat at Dacca?) To this the plaintiff said 'আবি নেই বলে গা' (I won't say now)

Q —Did he say anything else?

A —He said 'যব সময় হোঁগা বলে গা' (When the time will come, I will say all)"

The plaintiff is supposed to have had an interview with a police officer within a day or two of the 4th of May—with the Additional Superintendent

of Police, according to the plaintiff, with a Deputy Superintendent, according to the defence,—but the evidence regarding these interviews is far from satisfactory

VIGOROUS PROPAGANDA BY PLAINTIFF'S PARTY

From this time forward a vigorous campaign was carried on by supporters of the plaintiff to win people over to their side. The monster meeting of the 15th of May has been mentioned. But no communication was sent to Bibhabati Devi by the plaintiff, by Jyotirmoyee Devi or by any member of the Bhowal family. It is the common case of both parties that Jyotirmoyee Devi had been on friendly terms with Bibhabati Devi, and her failure to inform the latter of her husband's return is all the more significant. This is more particularly so in view of the fact that she did write to other people regarding the plaintiff's arrival. It is unfortunate that none of the letters written by her have been produced in court. The plaintiff made no attempt at that time to enter the family mansion and take up residence there. *he made no demand* on F W Needham or on J H Lindsay that they should hand over his share of the estate to him. In fact he behaved as though he realised that his claim would be rejected out of hand.

SISTERS' PETITION FOR ENQUIRY LINDSAY'S ATTITUDE

His first attempt to establish his claim was made when he visited J H Lindsay in Dacca on the 29th of May. Before that a petition signed by Gobinda Mukherjee, Jyotirmoyee Devi and Tarinmoyee Devi had been presented to the District Magistrate praying for an enquiry into the plaintiff's identity. The District Magistrate was summoned to produce this petition, but it was not produced—apparently owing to the failure of the plaintiff to comply with some departmental rule. The plaintiff made no attempt to produce a copy of the petition, or to examine Gobinda Mukherjee, and there is, therefore, nothing before the court to show what was contained in that petition, except what can be gathered from a letter written by J H Lindsay to the Commissioner of the Dacca Division on 1st of June, 1921. Lindsay's letter was not produced in the lower court, but has been marked as an exhibit in this court. It reads: "Sir, I have the honour to inform you that a petition has been filed before me as District Magistrate by Gobinda Chandra Mukherjee, brother in law of the late second Kumar of Bhowal, Jyotirmoyee Devi and Tarinmoyee Devi, sisters of the second Kumar, in which they state that the sadhu who is living with Jyotirmoyee is Ramendra Narayan Roy, the second Kumar, and that he has been identified by many persons as such. They have learnt that enquiry is being made about him, and they wish to produce evidence to prove his identity. They further wish that the evidence already recorded should be shown to them and that they should be allowed to cross-examine the witnesses. Obviously they have no right to see the evidence already recorded or to cross-examine the witnesses, and I have verbally told them as much. The question remains whether they should be allowed to produce evidence before me, and if so, whether the Estate should bear the expenses of these witnesses. One reason in favour of recording this evidence is that it should allay the feelings of the tenants who are much excited and who all believe the sadhu to be the second Kumar. Further, if this were done, I would then have ample justification in issuing

a notice to the tenants that there is no necessity for them to pay subscriptions to any body to enable the sadhu to run a suit in the civil court to prove his identity

2 On the other hand, the mere fact that I have consented to record such evidence might lead the people to believe that I think there is a reasonable probability of the sadhu being the second Kumar and might thereby encourage the agitators in his favour. There is something to be said for both points of view, so your instructions on this matter are solicited

I have the honour to be,
Sir,
Your most obedient servant,
Sd J H Lindsay,
Collector of Dacca

Memo No 144S

Copy forwarded to the Secretary to the Board of Revenue, Bengal, with a request that orders may be communicated by wire, if possible

Sd T Emerson,
Offg Commissioner "

NEXT STEP PLAINTIFF'S INTERVIEW WITH LINDSAY

Before this letter was written occurred the interview between plaintiff and J H Lindsay on the 29th of May. We have been asked to hold that no impostor would have dared to 'beard the lion in his den', and run the risk of examination and exposure. It must be conceded that this was a bold move—but audacity is a necessary quality of impostors. Actually there was comparatively little danger in seeking such an interview. The plaintiff was accompanied by two members of the Bar, who (in spite of J H Lindsay's recollection to the contrary) must have been present during the interview. J H Lindsay had no personal acquaintance with the late Ramendra Narayan Roy and no personal knowledge of the events at Darjeeling. He could not compel the plaintiff to submit to cross-examination. It has been argued that if J H Lindsay had made the best of this opportunity, he might have obtained sufficient material from the interview to establish definitely the truth or falsity of the plaintiff's claim. This argument overlooks Lindsay's ignorance of the details of the past, and his ignorance of the details of the plaintiff's story. On careful consideration of the facts, I am surprised that J H Lindsay succeeded in getting the plaintiff to answer as many questions as he did. If the note recorded by Lindsay represents accurately what the plaintiff said, it is almost sufficient in itself to disprove the plaintiff's claim. Whatever Lindsay chose to note about the interview could always be disowned, as has indeed been the case. In my opinion, the mere fact that the plaintiff sought this interview, is not inconsistent with his being an impostor.

Mr Chatterjee argued with great emphasis, on the strength of this interview, that the plaintiff courted examination and that the authorities always avoided questioning him. There is no real basis for this argument. After the

visit to J H Lindsay on the 29th of May, the plaintiff gave no further opportunity to the authorities to question him until 1929. Though the accused in the Defamation case instituted by Dr Ashutosh Das Gupta were his supporters and were prosecuted for acts performed in their zeal for his success, and though they examined witnesses to prove that Ramendra Narayan Roy had been poisoned at Darjeeling but was still alive, the plaintiff did not depose.

In the Sripur cases, the defence sought to prove these same facts, but again the plaintiff did not depose. The one occasion on which he entered the witness box, before the present suit was instituted, was apparently on 30th May, 1929. An order had been issued on him to show cause why he should not be prevented by injunction from visiting Jaidebpur. The proceedings were before the District Magistrate, who in spite of the protests of counsel, insisted on examining the plaintiff. When the plaintiff stated that he had no intention of visiting Jaidebpur, the District Magistrate had no occasion to question him further in those proceedings.

NO FURTHER MOVE TILL LONG AFTER

Far be it from me to suggest that it was the duty of the plaintiff to depose on any of these occasions, but the fact remains that he had the opportunity of doing so, and did not avail himself of it. In the circumstances, Mr Charterjee's picture of a plaintiff eagerly seeking opportunities to give his full story to officials will not bear examination. The fact remains that apart from the interview with J H Lindsay on 29th May, 1921, no claim was made by the plaintiff himself until he presented his memorial in December, 1926, and when that memorial was rejected, he took no further steps before presenting the plaint in the present suit in April, 1930. This delay was thought to require explanation, and the explanation put forward on behalf of the plaintiff was that he was deceived by the officials into thinking that they would investigate his claim and that there was accordingly no necessity for him to file a suit. It should be noted that this is merely an argument advanced on his behalf. Neither the plaintiff himself nor Jyotirmoyee Devi makes any pretence that they were so misled.

CONDUCT OF SATYENDRA AND OF GOVERNMENT OFFICIALS

The conduct of Satyendranath Banerjee and of the Government officials in the months following the plaintiff's assertion of his claim, has been subjected to criticism from two angles. In the first place, it has been argued that their conduct indicates their belief in the truth of plaintiff's claim, and in the second place, it has been urged that they have prevented people from deposing on behalf of the plaintiff.

A copy of F W Needham's report, *Ex 59*, was sent to Bibhabati Devi for information, and on receipt thereof Satyendranath Banerjee seems to have gone straight to the Secretariat to consult the Member of the Board of Revenue, regarding the action to be taken. As a result of that interview, he sent the following letter to the "Englishman", which appeared in that paper on the 9th of May, 1921 —

"Sir, you published on Saturday morning a report sent by the Associated Press from Dacca under the heading "Dacca Sensation", to the effect that a person has suddenly appeared who claims to be the second Kumar of Bhowal, who died twelve years ago

The late Kumar was attended in his last illness by Lieutenant Colonel Calvert, the then Civil Surgeon of Darjeeling, and the death certificate was given by Mr Crawford, Deputy Commissioner of Darjeeling

I was personally present at the time of the death of the late lamented Kumar and attended the funeral service along with other numerous friends and relatives of the deceased who were then present in Darjeeling. The Rani of Bhowal, the widow of the second Kumar, who is my sister, is still alive

Yours etc ,

S N Banerjee "

19, Lansdowne Road,

LINDSAY'S REPORT OF 10TH MAY

On the 10th May, J H Lindsay drew up a report in the matter of the plaintiff's claim, and sent a copy of the same to the Member of the Board of Revenue through Sasanka Coomar Ghose, Government Pleader of Dacca. This report was not admitted in evidence in the lower court, but was admitted before us with the consent of both parties. It reads

"Confidential

Report on the claims of a certain sadhu to be the second Kumar of the Bhowal Estate

This sadhu has been in this neighbourhood for about a couple of months and appears from the first to have been an interesting man, for he held conversation with people like the Government Pleader and the Chairman of the District Board. To these he said that he had been following the life of a sannyasi from the time when he was 12 years of age. Like other sannyasis, he paid a visit to Kashimpur and visited Jaidebpur on his return journey to Dacca. While there some of the old servants noticed a likeness to the second Kumar, and from his behaviour when a photograph of the Kumar was shown to him, the suspicion in their minds was confirmed. The rumour spread rapidly that the second Kumar had returned and is now almost universally believed by the tenants of the Estate and even by respectable gentlemen in Dacca. To understand one reason why this curious story could gain credence, it is necessary to recall a story of events at the Kumar's death. It is alleged that when the dead body was being taken to be cremated at Darjeeling where the death occurred, a very severe storm came on, which drove away the servants from the body on the funeral pyre. When the storm subsided and the attendants returned, the body was gone, but in spite of this they set fire to the wood and returned, saying that they had burnt the body. I have got copies of the medical certificate given by Colonel Calvert certifying to the death of the second Kumar on the 8th May, 1909, after an illness of three days, a certificate of his death by Mr Crawford, then Deputy Commissioner of Darjeeling, a certificate signed by Satyendranath Banerjee and C J Cabral that the Kumar's body was cremated in their presence, and similar certificates by Sasi Bhusan Banerjee, clerk in the Accounts office, Darjeeling and Satya Prasad Ghosal, clerk of the P W D Sub-Division, Darjeeling. There is no doubt whatsoever that the man is dead and that the Court of Ward has been perfectly justified in acting on the assumption of his death ever since it took charge of his estate.

2 The people of this country, however, are all very fond of miracle, and the tenants resent as blasphemy any doubt as to his identification. My first proposal was that he should be prosecuted under section 419 I P C, but in a consultation at Jaidebpur between the Superintendent of Police, the Government Pleader and the Manager, it was thought that the offence of cheating had not yet been completed, and so it would be worse than useless to lodge an information at this time. It would only arouse resentment, which will be all the greater if the prosecution fails. On the 6th instant, the sadhu publicly declared that he was the second Kumar, and many tenants agreed to support him and pay their rents to him, but so far he has not asked that any rent should be so paid. It seems that he is being tutored by the inmates of the houses of Jyotirmoyee Devi and the late Indumoyee Devi, who are sisters of the second Kumar, and who, of course, would be only too pleased if he re-appeared. On the 7th the Sub-Divisional Officer, the Superintendent of Police and other officials visited him, and I understand he was not able to tell the S D O the nickname of the second Kumar's wife. The sadhu speaks only Hindusthani and appears to be ignorant of both Bengali and English languages, which the second Kumar knew well. He told the Superintendent of Police that he wanted the Commissioner, the District Magistrate and the leading gentlemen of Dacca to convene a meeting at which he would satisfactorily establish his identity. On the 8th, many hundreds of gentlemen came from Dacca and many pressed the sadhu to speak in Bengali, but not a word was uttered in this language. On each of these days he was visited by 2 or 3 thousands of tenants, who were greatly delighted at the return of their Kumar.

3 Yesterday, the non-co-operators took a hand in the game, as this is an excellent opportunity for them to give trouble to Government, and they have publicly sworn in the name of Allah that they are determined to die for the sadhu, though Government may not recognise him as the second Kumar. The non-co-operation parties throughout the Estate are taking the matter up. Such is the situation at present, and there is no fear of a breach of the peace so long as no action is taken against the sadhu.

4 I had a consultation with the Superintendent of Police, the Manager and the Government Pleader this afternoon in which we came to the conclusion that it was better to let the sadhu commit himself more definitely, put himself completely under the law by a clear offence before any action should be taken. If he takes no further action, people may get tired of the new excitement. On the other hand, it seems to me that it would be wrong to call any meeting to establish or dis-establish the identity of the sadhu. If his identity is to be established, it must be done in a proper legal manner before a Court of Law where the evidence both ways would be submitted to trained minds. The Government Pleader will go to Calcutta to-morrow to tell Mr Lees about the present situation and to take his advice, and I am also asking him to take the best legal opinions about the legal position of the sadhu.

5 I have given the Government Pleader a copy of this report to take to Mr Lees.

Dacca

The 10th May, 1921

Sd J H Lindsay,
Magistrate-Collector of Dacca "

The Advocate General of Bengal was consulted whether it was advisable to prosecute the plaintiff, and he advised against a prosecution

SATYENDRANATH BANERJEE'S CONDUCT

Thereafter, Satyendranath Banerjee and Sasanka Coomar Ghose went to Darjeeling and there interviewed the member of the Board of Revenue. Shortly after that interview, a Deputy Magistrate of Darjeeling was ordered to record the statements of people in Darjeeling, who remembered the events of May, 1909. The conduct of Satyendranath Banerjee, first in not going to Jaidebpur to confront the plaintiff, and second in going to Darjeeling to arrange for evidence of the cremation of Ramendra Narayan Roy being recorded, has been stressed as indication of his guilty conscience. The learned counsel for the plaintiff has contended that if the defence story were true, Satyendranath Banerjee would have rushed off to Jaidebpur and confronted the plaintiff, that he would have confounded the latter by asking him half a dozen questions, and that he would have had him whipped out of Jaidebpur.

Calcutta was then nearly 24 hours' journey distant from Jaidebpur. There was consequently no possibility of Satyendranath Banerjee acting impulsively on receipt of the news about the plaintiff. Moreover, though Bibhabati Devi was the owner of one-third share in the estate, that share was not under her control and management. The management of the estate was in the hands of an officer appointed by Government, and the local influence of Bibhabati and Satyendranath Banerjee in Jaidebpur must have been very small. The manager of the Court of Wards would not have countenanced violent action, the tenants were more likely to pay attention to Jyotirmoyee Devi than to Satyendranath Banerjee. In my opinion, Satyendranath Banerjee's conduct in going straight to the Secretariat for advice and not rushing off to Jaidebpur, showed common sense, not a guilty conscience. I cannot imagine anything much more unwise in the circumstances, than for Satyendranath Banerjee to rush off to Jaidebpur to catechise the plaintiff. Such conduct would be construed as an admission that Ramendra Narayan Roy was not believed to be dead. Furthermore, in judging his conduct it is necessary to realise what was his state of mind at the time. If the defence case is true, he knew that Ramendra Narayan Roy was dead and that plaintiff was an impostor. He knew that every body at Jaidebpur had accepted that death as a settled fact. It seems to me that he must have assumed that Jyotirmoyee Devi and other members of the family were as convinced of the death of Ramendra Narayan Roy as he was, and that, therefore, he must have assumed that they were knowingly putting forward an impostor. In such circumstances he would not be likely to try to convince them of the imposture, he would assume that they were already aware of it. If he was of the opinion that members of the Jaidebpur family were deliberately supporting a man known to be an impostor, and were procuring support for him, it was only natural that he should take steps to secure evidence of Ramendra Narayan Roy's death and cremation as soon as possible, and to have that evidence placed on record.

The suggestion has been made that he and Sasanka Coomar Ghose went to Darjeeling either to influence the officer who recorded the statements, or to influence the persons who made them. The suggestion that they attempted to influence the Deputy Magistrate was dropped. As regards the suggestion that they intended to influence the witnesses, it is sufficient to say that there is no evidence that they attempted to do so, though some of those

witnesses have deposed on behalf of the plaintiff I am unable to find any reason for holding that the conduct of Satyendranath Banerjee, on hearing the news of plaintiff's claim, was in any way unnatural, or in any way indicated a guilty conscience, nor I am satisfied that he went to Darjeeling to procure a record of false statements

LINDSAY'S IMPOSTOR NOTICE

The interview of the plaintiff with J H Lindsay has already been referred to Lindsay's record shows that he told the plaintiff that the Board of Revenue would not accept him as the Kumar, but that plaintiff could prove his identity in a court of law Lindsay offered to record evidence on behalf of the plaintiff if the latter cared to produce it Lindsay's note further shows that he was prepared to consider whether the cost of producing the evidence should be borne by the estate From the note it also appears that the pleaders with the plaintiff assured J H Lindsay that they would file a petition for enquiry on the following day No such petition was filed On the 3rd of June, 1921, was issued the 'impostor' notice which reads

"All the tenants of the Bhowal estate are hereby informed that the Board of Revenue has got conclusive proof that the dead body of the second (*madhyam*) Kumar of Bhowal was burnt to ashes in the town of Darjeeling 12 years ago So the sadhu who has been declaring himself as the second Kumar is an impostor Any one who will pay rents or subscription to him will do that at his own risk

By order of the Board of Revenue,

J H LINDSAY,

Collector of Dacca

3-6-21"

The learned counsel for the plaintiff has contended that there was no justification whatever for issuing such a notice, and that J H Lindsay behaved improperly in doing so He argued further that J H Lindsay relied wholly on the Government weather reports in coming to the conclusion that plaintiff was an impostor, and that Lindsay must have realised that such evidence was not conclusive It is true that Lindsay stated in his evidence that he was convinced from the beginning that plaintiff was an impostor and that he considered the rain reports conclusive, but he did not say that he had no other material

ACTION FULLY JUSTIFIED

Lindsay had reports showing that plaintiff had refused to answer questions put to him he had also a copy of the certificate granted by Col Calvert and of the statements of people who said they had seen the body burnt to ashes He had also had an interview with the plaintiff himself Even if it be conceded that Lindsay made mistakes when he drew up his note regarding the interview, there is no reason for supposing that he did not believe his

note to be true. That note shows that Lindsay thought that plaintiff had not got syphilis, and that plaintiff had seemed to deny having had syphilis. It further shows that plaintiff was strangely ignorant about some details of the past and was wrong in his statements on others. All these materials, together with the rain report, furnished good reasons for believing plaintiff to be an impostor, and I can see no reason for supposing that Lindsay regarded the material in his possession as other than conclusive. The argument has been put forward that J. H. Lindsay had no right to issue such a notice without first holding a public judicial enquiry. I cannot accept this argument. Lindsay was an Executive Officer, responsible for the administration of the Bhowal estate. The pretender had launched a campaign of propaganda, and tenants were being told that there was conclusive proof that plaintiff was indeed Ramendra Narayan Roy. They were told that every mark of his body agreed, that he remembered facts known only to members of the family, and that he had been recognised and accepted by all members of the family, except the gang of unscrupulous rogues who had tried to poison him, and that "poor" Bibhabati, who was so completely under her brother's control that she dared not yield to the dictates of her own heart and conscience. In these circumstances, the tenants were withholding rent, and the administration of the estate was rendered extremely difficult. In my opinion, it was the Collector's duty to inform the tenantry at the earliest possible moment what the attitude of the Board of Revenue was to be. He was not a judge determining finally the rights of the parties, he could not afford to spend 2 or 3 years recording evidence, nor could he afford to listen to arguments for nearly a year as we have done. He had to act quickly. If instead of saying, "the Board of Revenue has got conclusive evidence", he had said, "the Board of Revenue has evidence which the Board considers conclusive", it would be difficult to criticise this notice.

EFFECT OF PROPAGANDA ON EVIDENCE OF RECOGNITION

The vigorous propaganda of the plaintiff's supporters compelled the Collector to issue the 'impostor' notice. Though I consider the issue of that notice justified, its effect must not be overlooked when examining the evidence of recognition adduced in the case. For ten years before the institution of the case, the witnesses were being told by the one party that the plaintiff was undoubtedly Ramendra Narayan Roy, that his marks agreed, that he remembered all the details of the past, and that all his relatives had recognised him, and by the other party, that he was an impostor and that the Board of Revenue had conclusive proof that the real Ramendra Narayan Roy was dead and that his body had been burnt to ashes. Obviously people must have discussed the matter and argued on the probabilities. The very arguments which appealed so strongly to the learned trial judge must have occurred to many people—the improbability of a *purdanashin* Bengalee lady attempting to set up a Punjabee as her brother, the great probability that such an attempt would fail, and the opprobrium she would earn if it did.

Many persons must have been practically convinced one way or the other, before even they set their eyes on the plaintiff. Those who were impressed with the one set of arguments would be prepared to accept him as the genuine Ramendra Narayan Roy, if there was the very slightest physical resemblance. Those to whom the contrary arguments appealed, would be prepared to reject him, however great the physical resemblance.

FAILURE TO APPLY TRUE TEST OF RECOGNITION

The learned trial judge seems to have overlooked the effect of this propaganda, and to have assumed that a witness who was honest was necessarily reliable. The names of witnesses have been given and the reasons for regarding them as honest, but the manner in which they are supposed to have recognised the plaintiff is seldom referred to. However honest a witness may be, if he went to see the plaintiff, half believing that he was Ramendra Narayan Roy, and if he was unable to convince himself of the identity without asking questions or without receiving some evidence such as plaintiff's apparent recognition of the witness, one of two conclusions may safely be drawn—*i.e.*, either plaintiff's appearance was substantially different from that of Ramendra Narayan Roy when last seen by the witness, or the witness's recollection of Ramendra was so indistinct or uncertain that immediate recognition did not follow. We are assured that with the exception of the beard and the long matted hair, there was no change in appearance—and even the beard was removed in August, 1921. Therefore, if there was hesitation in recognition after August, 1921, it must be that the witnesses' recollection of Ramendra Narayan Roy was too vague to be of any value to the court, or the case of exact similarity in appearance must be abandoned. With respect to those witnesses who could not accept the plaintiff until they were given instances of his memory of the past, it is clear that their supposed recognition has no value. They did not, in fact, recognise the plaintiff, they were convinced of his identity by evidence placed before them. The fact that the evidence convinced them is irrelevant, the question is whether the same evidence appeals to us as convincing.

TYPICAL ILLUSTRATIONS

A good instance of an honest witness who has been convinced of the identity of the plaintiff, but whose evidence—as evidence of recognition—goes against the plaintiff is Harendra Kumar Ghosh. This witness had seen Ramendra Narayan Roy several times and had met him on one occasion at least. When he saw the plaintiff in 1921, the witness thought that he recollected the appearance of Ramendra Narayan Roy, and he saw a similarity between the face of the plaintiff and the face he recollected. But he was not satisfied. He put questions to the plaintiff in order to satisfy himself. The plaintiff refused to answer, and the witness was not convinced of the identity. Later, as the trial progressed, that witness read some of the evidence led on behalf of the plaintiff and convinced himself that the plaintiff was no impostor. The fact that the witness was convinced by some of the evidence recorded in the case, is of no assistance to the plaintiff, the fact that he was not convinced of the plaintiff's identity until he read the evidence would be strong evidence against plaintiff, if the witness had in 1921 a clear recollection of the features of Ramendra Narayan Roy.

Another witness who deposed that he recognised the plaintiff, but whose evidence shows that he was unable in fact to recognise him, is Dr Narendranath Mukherjee. From his examination-in-chief, it appears that he knew the Bhowal family fairly well, and he deposed that the plaintiff is Ramendra Narayan Roy. In cross-examination the witness stated that he had not seen the plaintiff after the cremation in Darjeeling until June or July, 1933, when plaintiff called upon witness to persuade him to give evidence. The

witness did not, however, agree then to give evidence, he told the party to bring plaintiff again so that witness might scrutinise him further. The plaintiff did not again see this witness until two days before the latter deposed in court. On the occasion of this second visit, Dr Narendra Nath Mukherjee had to convince himself by examining the plaintiff's body for marks of syphilis. It is clear from this evidence that the witness was not really able to recognise plaintiff, though he was persuaded of plaintiff's identity. These instances are sufficient to show that it is not enough to consider whether the witnesses are honest, their evidence must be examined in order to determine whether their supposed recognition has any value or not.

NEED FOR CRITICAL SCRUTINY OF EVIDENCE OF RECOGNITION

The learned trial judge has divided the witnesses of recognition into two classes, viz, "(1) those who certainly knew the Kumar and could not possibly mistake him, whatever their credit, and (2) those whose credit cannot be seriously questioned and who knew the Kumar, and the only question is how far they remember him." In my opinion, it is not worth while discussing the evidence of those witnesses, however honest, who did not know Ramendra Narayan Roy well. A large number of witnesses have been examined who knew him well, and among them some at least are honest. If the evidence of honest witnesses who knew him well does not carry conviction, the evidence of those who knew him but slightly cannot improve matters.

In the first category, namely those 'who could not possibly mistake the Kumar', the learned trial judge has included Dr Narendra Nath Mukherjee, whose evidence I have discussed above. That evidence, in my opinion, exposes the fallacy in the learned judge's argument. The evidence even of those witnesses who knew Ramendra Narayan Roy intimately must be examined critically to determine what value it possesses. Obviously the people most intimately acquainted with Ramendra Narayan Roy were those relatives and friends of the family who lived at Jaidebpur. A striking feature of the present case, and one that differentiates it sharply from the Tichborne case, is that practically all the relatives of the Bhowal family, and even some relatives of Bibhabati Devi, have accepted the plaintiff and have supported his cause. The only relative of the Bhowal family who supported the defence was Phanī Bhusan Banerjee, and his conduct was so unsatisfactory that it is impossible to place any reliance on his testimony.

SUPPOSED RECOGNITION BY RANI SATYABHAMA DEVI

The learned counsel for the plaintiff has drawn our attention to the conduct of members of the family who accepted the plaintiff, but who could not be examined as witnesses. The most important of these is the old grandmother Satyabhama Devi who undoubtedly accepted plaintiff as her grandson and went to live with him in Dacca in July, 1922.

The learned trial judge attached great importance to the acceptance of plaintiff by Satyabhama Devi and expressed the opinion that her grandmotherly instinct could not be at fault. Mr Chatterjee also has stressed this fact in his argument before us, and has pointed out that Satyabhama Devi could not possibly have been actuated by any dishonest motive. In support of this contention, he referred us to the evidence of Bibhabati Devi who was not prepared to say that Satyabhama Devi was dishonest in the matter. Even though Satyabhama Devi accepted the plaintiff as her grandson, and even

if she be regarded as absolutely honest, it does not follow that such acceptance is conclusive proof of identity, it is necessary to examine the circumstances to determine how she came to accept him. But it is extremely difficult to find definite evidence on this point.

Satyabhama Devi occupied a suite in the family mansion at Jaidebpur, but after the death of the youngest of her grandsons and after her granddaughters had begun to reside in their own houses at Chakkar, a short distance from the paternal home, she spent a good deal of her time with her granddaughters. In the year 1921, though her permanent home was in the family mansion, she was often to be found in Jyotirmoyee Devi's house. It is not clear whether she slept in that house, or merely spent her days there, but it is the case of the plaintiff that she was present in Jyotirmoyee Devi's house during both the visits of plaintiff in the middle of April, 1921. Jyotirmoyee Devi described how, on the second day's visit, the plaintiff asked Satyabhama to sit on the *chouki* by him, and how, when she did so, he said to her "sit up", and then seizing her leg, and drawing her towards him, said, "The old woman has had much sorrow." There is no record of any answer by Satyabhama Devi.

The grandmother was also present at Jyotirmoyee Devi's house on the 3rd May, 1921, the first day on which the plaintiff omitted to besmear himself with ashes. We are told that she recognised the plaintiff on that day, but not that she did or said anything to indicate her recognition. If Satyabhama Devi was indeed present on all these occasions, it is remarkable that she never addressed plaintiff as her grandson. It seems that her grandmotherly instinct was dormant during those early days, otherwise she would have thrown caution to the winds, and said at once that she had recognised him. The truth of the matter is that Satyabhama was then a very aged lady. The defence suggested that she was senile and almost blind, and completely under the influence of Jyotirmoyee Devi.

There is no record of any overt act on the part of Satyabhama Devi until after the departure of the plaintiff from Jaidebpur. Plaintiff stated that Satyabhama Devi accompanied him when he went to live in Dacca. But he was inaccurate in this as in so many details.

On the 8th of June, 1921, the day following plaintiff's departure from Jaidebpur, the following letter was sent over her signature:

"To the object of great blessings,

Sriman Ramendra Narayan Roy

I am extremely anxious not to get any news of your arrival since you have left for Dacca. Please relieve me of my anxiety by writing to me about the welfare of yourself, Srimati Jyotirmoyee and Sagar and others immediately on receipt of this letter, and do inform me daily by letters about your welfare. You are my lost treasure. I am now passing my days like a lunatic being separated from you, and do inform me by writing as to by which date you will come home.

Srimans and Srimatis (boys and girls) are doing well here. Please make me happy by writing to me about the welfare of all the inmates of the house in your next letter.

With blessings,

Your grandmother (father's mother)
(Name Stamp) Sri Satyabhama Devi "

RANI SATYABHAMA'S EYE-SIGHT

Satyabhama Devi was practically illiterate. She could not read or write in Bengali or in English, but she could sign her name. In spite, however, of her ability to sign her name, she was accustomed more frequently to affix her signature to letters by means of a rubber stamp. This letter (*Ex 54*) seems to be a genuine spontaneous letter, and shows how whole-heartedly she had accepted plaintiff by that time. But she did not go to Dacca to live with him until July, 1922, and immediately after her arrival in Dacca she was taken to the Civil Surgeon, Dr MacKelvie, to have her eyes tested. Dr MacKelvie apparently tested her eye-sight and gave the following certificate:

"This is to certify that I have to-day tested the vision of Rani Satyabhama Devi of Bhowal. For her age (said to be about 90) I consider her vision good. She was able to count the test dots and to recognise faces.

Dacca,
20-7-1922

M. MACKELVIE, Lt-Col, I.M.S.,
Civil Surgeon "

HER LETTER TO BIBHABATI

On the day following this examination by Dr MacKelvie, a letter was sent over the old lady's signature to Bibhabati Devi. The letter reads:

"To the object of blessings
Srimati Bibhabati Devi

Ramendra Narayan Roy, the second son of my late Raja Rajendra Narayan Roy is alive. I have closely observed the person, who came to this locality a little over one year ago in the garb of an ascetic and who is at present staying in the town of Dacca and whom many tenants of Bhowal and many gentlemen of Dacca are acknowledging as the second Kumar Ramendra Narayan Roy. I saw him first at Jaidebpur and I have been seeing him every day in his Dacca residence during the last few days. I have no doubt in my mind that that person is my second grandson (son's son) Kumar Ramendra Narayan Roy. I think, although I have grown old, my eye-sight is still good. Then at the time of the *śradh* ceremony after the so-called death of Sriman Ramendra Narayan, there was a talk of performing the *śradh* by burning his effigy by Kusa-grass as his dead body was not cremated. You are fully aware of that.

It is my conviction that there will be no doubt whatever as soon as you see him with your own eyes by coming here. None of you have, as yet, seen the second Kumar with your own eyes since his coming to Dacca in the garb of an ascetic. You might have come to know it to some extent from others and newspapers.

Hence to reveal the real truth I invite you with all affection to come to Dacca. Please come to Dacca as soon as possible, and being fully aware of the real state of things on seeing with your own eyes, maintain the dignity and glory of the family of my late illustrious husband by doing what according to justice and religion, you think to be your duty.

I came to Dacca on the 30th Asarh last I shall remain at Dacca awaiting your arrival here I am keeping a good health I trust you are doing well by the grace of God

With blessings,

(Name stamp) Sri Satyabhama Devi "

Bibhabati Devi refused to take delivery of this letter, which was returned to the sender

It is interesting to contrast this letter with the letter sent by Satyabhama Devi to the Maharajadhiraj Bahadur of Burdwan in 1917 In the earlier letter there was no mention of any talk about *kushaputtahka* No explanation is forthcoming from Jyotirmoyee Devi or any one else, why no previous letter had been sent to Bibhabati Devi announcing the return of her husband

LETTER TO COLLECTOR OF DACCA

Shortly after the despatch of this letter to Bibhabati Devi, another letter was sent over Satyabhama Devi's signature to J G Drummond, successor of J H Lindsay as Collector of Dacca That letter is in the following terms

'Sir, I received your letter of the 25th May last in due time I am obliged to you for the regard you have shown for my feelings, although you have been unable for official reasons to accede to the request made in my letter of the 8th Jaistha last

Acting on your suggestion I have taken the trouble to come down to Dacca and met the sadhu I have seen him every day at Jaidebpur during his stay there After coming here I have seen him daily I have come to the conclusion that he is no other than my second grandson Kumar Ramendra Narayan Roy

You have informed me that the fullest possible enquiries were made about the sadhu, and it was established beyond the shadow of doubt that his claim to be the Kumar (is) a bogus one As to this, allow me to say that an enquiry or enquiries in which the very near relations of my grandsons are not confronted with the sadhu cannot be regarded as full or complete In particular, I beg leave to mention that the wives of 1st and 2nd grandsons were never brought to Dacca and asked whether they recognise the sadhu as the second Kumar of Bhowal or not

There was rumour of poison having been administered to my 2nd grandson at Darjeeling, and there was a deep mystery regarding the alleged death of my 2nd grandson at Darjeeling As far as my information goes, his body was never cremated There was some discussion on the point at the time of the *sradh* at Jaidebpur There was also a persistent rumour afloat not only in Bhowal but in several parts of Bengal that my 2nd grandson was alive and moving with the sadhus

In the case of the death of a sonless Hindu, the proper person to put the first fire into the mouth of deceased is the wife, and Rani Bibhabati Devi who was at Darjeeling at the time of the alleged death of the second Kumar did not attend the cremation ceremony and did not perform act of putting the first fire into the mouth of the deceased—an act which is important in the estimation of a Hindu and one for which every Hindu is very anxious.

Evidently Rani Bibhabati is relying upon the statement of her brother Babu Satyendranath Banerjee about the story of the cremation. Satyendra accompanied the party of the second Kumar to Darjeeling, and his conduct in connection with the alleged death of my 2nd grandson is not free from suspicion. His subsequent conduct also is highly suspicious.

Rani Bibhabati is now living in Calcutta under the care of her brother Satyendra, and it is an easy affair for you to enquire and ascertain whether it is to the interest of Satyendra that the existing arrangements should not be disturbed.

Babu Surendra Nath Mukherjee, B.L., an educated and respectable gentleman of Dacca, had gone to Darjeeling and made enquiries about the alleged cremation, and his impression is that the body of my 2nd grandson Kumar Ramendra Narayan Roy was never cremated. That gentleman can meet you and discuss the matter with you if you so desire.

As a *pardanashin* lady in an advanced stage of life it is not possible for me personally to examine all the evidence that the Revenue authorities may have got in this connection and on the basis of which the Board of Revenue has thought fit to declare my 2nd grandson to be an impostor.

The enquiries were made in the time of your predecessor Mr J H Lindsay, I.C.S., and I am not aware which portion was made by him personally and which portions by others. I shall be obliged if you will kindly supply me with a statement of the nature of the enquiry that has been made, and also with a copy of evidence that has been obtained or elicited at the enquiry. I propose to have the evidence examined by six eminent lawyers, if possible, by one lawyer from each one of the six different High Courts of India. These lawyers will be persons unconnected with the Bengal Court of Wards or any member of the Bhowal Raj family. I will communicate to you the result of their examination in due time. I will bear the cost of this examination from my own private funds. I also desire to engage one or two retired honest officers of the Detective Department to find out the truth in this case. For I am sure, that if I can convince you about the identity of the sadhu with my 2nd grandson Kumar Ramendra Narayan Roy, your sense of justice will induce you to recommend to the Honourable Board of Revenue to reconsider and alter their decision.

I have been informed and believe that several old officers of the Bhowal Raj Estate who are now serving under the Court of Wards are quite ready and willing to admit the sadhu as the second Kumar of Bhowal, and they do not do so openly for fear of losing their appointments. If they are given the assurance that they run no risk in telling what is true, then you will be able to ascertain the true state of things from several of them.

There is probably living no officer, European or Indian, who can speak to you about my husband's loyalty and respectability. There may, however, be records in the Collectorate which will satisfy you on the point. I have often heard from my deceased husband about the justice of the British Government in India and always believed in the same. Relying upon that impression and belief, I am making this prayer to you.

To be sure that in this old age of mine there is no defect in my vision and that my eyes do not deceive me, I got myself examined by the present Civil Surgeon of Dacca. He tested me about my eye-sight and found my vision good and certified that I could recognise faces. This certificate is a recent one and was signed on the 2nd instant. The recognition by me of my 2nd grandson cannot, therefore, be regarded as an illusion.

If Mrs Drummond will kindly condescend to come over to my place on some evening which is the most convenient time for me, she can see me and report to you about my physical condition

I am in good health With my prayer to God for your happiness and prosperity, I remain, yours sincerely,

Rani Satyabhama Devi

To J G Drummond, Esqr ,
Collector of Dacca "

The Collector of Dacca was called upon to produce the original of this letter, but the original could not be traced and was not produced Accordingly the draft copy kept by Satyabhama Devi's officers was produced and marked as an exhibit The defence has not challenged the accuracy of the copy and has not disputed the fact that the letter was sent But no trace of its receipt could be found in the Collectorate registers, and admittedly no reply to it was ever received, and no reminder was ever issued

"CLOVEN HOOF" OF THE LAWYER

The two letters are obviously not the unaided efforts of the old lady They reveal clearly the cloven hoof of the legal adviser In my opinion, they cannot be accepted as any indication of Satyabhama Devi's own feelings They were merely moves in the campaign to get the plaintiff accepted J H Landsay had refused to allow the plaintiff or his supporters to see the statements recorded during the enquiry in Darjeeling and elsewhere This letter (Ex 274) was a second very transparent attempt to get copies of those statements These letters are interesting as an indication of the way the plaintiff's case was being developed, but they are of no value as evidence of Satyabhama Devi's recollection of past events On the other hand, if she knowingly attached her signature to these letters, they show very clearly, how completely she was under the influence of others

RANI SATYABHAMA'S SRADH

Satyabhama Devi continued to live at Dacca with the plaintiff until her death in December, 1922 When her body was cremated, plaintiff performed *mukhagn* On this occasion, for the first time apparently in the history of the family, a photograph was taken at the cremation ground For *sradh* ceremony, written invitations were sent out to friends of the family over the signature of 'Ramendra Narayan Roy' Some gentlemen sent replies to these invitations, and addressed their replies to Ramendra Narayan Roy We have been asked to accept the fact that a gentleman sent such a reply addressed to Ramendra Narayan Roy as proof that he had recognised the plaintiff This sending of written invitations was also an innovation

Plaintiff performed the *sradh* of Satyabhama Devi We have been asked to hold that the fact that plaintiff performed *mukhagn* at the cremation and subsequently performed the *sradh* ceremony is proof conclusive that Jyotirmoyee Devi and her relatives honestly believed him to be Ramendra Narayan Roy In my opinion, it cannot bear that interpretation Having set plaintiff

up as her brother, Jyotirmoyee Devi could not avoid allowing him to perform these ceremonies. To have refused such permission would have been tantamount to public confession of conspiracy. If she had dishonestly supported his claim, she was bound to act as though she honestly believed him to be her brother.

CONCLUSION NO INDEPENDENT RECOGNITION BY RANI SATYABHAMA

The material on record shows that Satyabhama Devi did, in fact, accept the plaintiff as her grandson but we are left in the dark as to what convinced her of his identity. She was a very old lady and sufficiently under the influence of others to put her signature to letters containing false statements of fact. We are told that when with the plaintiff, she wanted to play a game *Raja-o-Rani*, which grandmothers frequently play with their grand-children in the country. From the description of the game, it is obvious that ordinarily grandmothers only play it with grand-children who are still children. It is obviously not a game for adults. If it is true that Satyabhama Devi wanted to play the game with plaintiff, it would indicate that she was definitely senile. My conclusion is that there is nothing to indicate independent recognition of plaintiff by Satyabhama. It is equally likely that she accepted him on the strength of Jyotirmoyee Devi's assurance that he was Ramendra Narayan Roy.

I do not propose to consider the alleged recognition of plaintiff by other persons who have not deposed in the case. For one thing, the circumstances and the manner of the alleged recognition are not known. In so far as the persons referred to are still alive, the fact remains that they have not come into the witness box and given their depositions on oath. If they are unwilling now to support the plaintiff's claim, it does not follow that they are dishonestly denying it. There is nothing to indicate whether the acceptance or the denial represents their honest opinion. Moreover, it may easily have happened that in the enthusiasm of the moment, some people accepted the plaintiff without question, but later when they came to consider the matter in the cold light of reason, they rejected him. When the evidence regarding the monster meeting of the 15th May, 1921, is examined, it is clear that thousands of people acclaimed the plaintiff as Ramendra Narayan Roy without having had an opportunity of recognising him. The tremendous influence of mass suggestion must be taken into consideration when examining the conduct of the persons concerned. Hence I propose to consider only the evidence of recognition given by witnesses who have deposed in the case.

EVIDENCE OF RECOGNITION BY JYOTIRMOYEE DEVI

The most important of these is undoubtedly Jyotirmoyee Devi. She is a sister of the late Ramendra Narayan Roy, and she lived at Jaidebpur in the family mansion until after the supposed death of Ramendra at Darjeeling. She knew her brother very well indeed. Even if it be supposed that with the lapse of time she had idealised his memory and had forgotten to some extent his features, it seems certain that she could not live in constant contact with an impostor for more than a dozen years without discovering the imposture. She might be tricked at first by a resemblance, but constant intimate contact would be sure to reveal the truth. Mr Chatterjee has argued

—and I think rightly—that if Jyotirmoyee Devi was honest in her deposition in court, the plaintiff must indeed be her brother. The learned trial judge, without going quite so far as this, also considered the question of the honesty of Jyotirmoyee Devi to be of the greatest importance. But beyond referring to the “singularly impressive and earnest way in which Jyotirmoyee Devi deposed”, the learned judge does not examine her evidence critically to determine whether it is honest evidence or not.

QUESTION OF JYOTIRMOYEE'S HONESTY

The learned judge was impressed with two arguments, *viz*, the utter impossibility of a ‘conspiracy, suddenly conceived, or conceived in the course of three days, while the man was sitting in the yard, a sannyasi, bearded and ash-besmeared and with his flowing *jata*, to adopt him—a mad conspiracy to pass him as the Kumar, a singularly looking individual so difficult to personate, although he did not know Bengali, and not a detail of so difficult a role’

The improbability of her supporting such an impostor is again emphasised in the judgment in these words

“A brother might suit her, but one does not adopt a brother on that account, and if she was insane, and thought that a Punjabee could pass as the Kumar, despite the widow, despite the resources of the Bhowal estate, despite the uncertainty and remoteness of the success, despite Satyabhama Devi, despite her own notions of caste and honour, despite her own financial ruin, and exile from home, the whole Pargana, and outsiders, and decent people, would not go mad and support this nefarious scheme which she suddenly conceived, and sought to carry out by placing the sannyasi in the open, and sending him to the Collector, and demanding an enquiry at a moment when a single question would expose the fraud. The thing is inconceivable.”

The second fact that influenced him was that Jogendra Nath Banerjee, one of the pillars of the defence case, believed at first that Jyotirmoyee Devi was honest in her acceptance of the plaintiff. These reasons seem to me utterly insufficient for assuming that Jyotirmoyee Devi was necessarily honest in her acceptance of the plaintiff.

PROBABILITY OF CONSPIRACY TO RUN AN IMPOSTOR

It may be conceded that it is most unusual for a Bengalee lady to put forward a Punjabee impostor as her brother, it is equally unusual for a Bengalee lady to deny her own husband. It may be conceded that there was great risk of an imposture being discovered, and at least a reasonable possibility of the scheme failing. In other words, such a conspiracy as alleged by the defence is an improbable one. If the alternative to the theory of conspiracy was a story of every day probable happenings, the very improbability of the theory of conspiracy might justify its rejection. But in the present case, the alternative is a story at least as improbable, if not more so.

The probability of a living man being taken to the cremation ground to be burned is not great. The probability of a violent storm occurring in one isolated spot, in the middle of a ten-day spell of settled fine weather, while the fine weather continued all round, is remote. That such a storm should occur at the very moment the body of Ramendra Narayan Roy reached the cremation ground is an extraordinary coincidence. The probability that when one corpse was lost, the funeral party should think of procuring a substitute, and that a suitable substitute should be available in such a place and at such a time, is so small as to be almost negligible.

In the circumstances of the present case, it is not sufficient to base a finding of Jyotirmoyee Devi's honesty on the mere fact that the theory of imposture is improbable. When there is a conflict of improbabilities, the evidence must be examined in order to ascertain whether the conduct of the persons concerned is more consistent with the one story or the other. Moreover, the learned trial judge overestimated the difficulties in the path of an impostor. He assumed that any conspiracy to put forward an impostor must have been conceived and put into operation within three days at the most. I am unable to understand why this assumption should be made. It is true that there is no evidence of any conspiracy before the plaintiff's arrival in Jaidebpur, but evidence of conspiracy is necessarily confined to evidence of acts performed as a result of conspiracy, except in the rare cases where a conspirator turns traitor and reveals the conspiracy, or in the even rarer cases where conspirators are overheard in the act of conspiring. The fact that steps recognisable as steps taken in furtherance of the conspiracy, cannot be identified before the plaintiff's arrival in Jaidebpur, does not mean that the conspiracy (if any) was conceived after his arrival.

RELEVANT CONSIDERATIONS

The effect of the 1917 rumour on the popular imagination must have shown any intending conspirator that an impostor would have a fair chance of success with the illiterate tenants at least. The refusal of the plaintiff to give a clear and consistent account of the reasons for his coming to Dacca, or of his movements during the year immediately preceding his arrival might mean that he had something to hide which would support the theory of conspiracy. But even if it be thought that there was no possibility of conspiracy before his arrival in Jaidebpur, there still remains the fact that three weeks elapsed—not three days only—between Jyotirmoyee Devi's meeting with the plaintiff and his decision to claim to be Ramendra Narayan Roy. Three weeks is ample time for a conspiracy of the type suggested in this case.

The danger of incurring public censure has also been over-estimated. If Jyotirmoyee Devi and her family adopted an attitude of judicial impartiality until after the plaintiff had been acclaimed by the enthusiastic vote of 20,000 tenants,—and the letter *Ex 59* suggests that this was their attitude, it would be difficult to censure her for saying that plaintiff bore a striking resemblance to her brother. Once the striking resemblance was accepted, there were only three serious obstacles in the way, *viz*

- (1) plaintiff's twelve years' absence without explanation,
- (2) his ignorance of Ramendra Narayan Roy's past history, and
- (3) his ignorance of the Bengali language

One explanation—complete loss of memory together with the fact that he had spent the last twelve years of his life in the company of Punjabee sannyasis, would serve for all three. The question was, would the story of complete loss of memory be swallowed? It was. The story of complete loss of memory for a period, is still an essential part of the plaintiff's case, and indeed the plaintiff still asserts that he has recovered his memory of the past in part only.

NO INSURMOUNTABLE OBSTACLES

It is obvious from the above that the chief obstacles to success were the difficulty in persuading people of the physical resemblance, and the loss of memory. If these obstacles were surmounted, the other difficulties seemed trivial in comparison. It was possible for Jyotirmoyee Devi and her associates to find out, before committing themselves irrevocably, whether these obstacles were insurmountable. Once they found that people in general accepted the striking resemblance as a fact and swallowed the story of loss of memory, they ran no very great risk either of punishment or of censure—at least until they entered a witness box and commenced to give evidence on oath. There were some risks, it is true, but there was also the prospect of great reward, and the risks were worth running. The learned counsel for the plaintiff has asked us to hold that because there is no evidence of any agreement between plaintiff and Jyotirmoyee Devi or others of her family, therefore Jyotirmoyee Devi would not profit by plaintiff's success. It is difficult to take such a submission seriously. The fact that no agreement has been proved, is no reason for supposing that no agreement can exist. Moreover, if plaintiff is an impostor, it seems probable that he will continue to depend on Jyotirmoyee Devi and her relatives to enable him to continue the imposture.

Mr Chatterjee also drew our attention to the statement of Jitendra Chandra Mukherjee to the effect that even after acknowledging plaintiff as Ramendra Narayan Roy, if they had come to know that he was an impostor, they would have driven him away. This sort of evidence carries about as much weight as a plea of not guilty in a criminal trial. In the absence of anything to indicate that Jyotirmoyee Devi and her relatives had conspired to set up an impostor, such a statement could be believed. If, on the other hand, the evidence indicated that they had so conspired, such a disclaimer would carry no weight.

In considering this question of conspiracy, one aspect of the case should be borne in mind. The plaintiff's conspiracy—if conspiracy there was—could have been hatched at any time before the 4th of May, 1909. The defendants' conspiracy to find a substitute body for cremation could not possibly have been conceived until 3 hours or so before it was successfully carried out. nobody could possibly provide in such a manner for so improbable an event as the loss of the real dead body.

JOGENDRA NATH BANERJEE'S BELIEF IN HONESTY OF JYOTIRMOYEE

The other reason given by the learned trial judge for believing in Jyotirmoyee Devi's honesty seems to me equally unconvincing. Jogendra Nath

Banerjee may be a hard-headed shrewd man of the world but the fact that he thought at first that Jyotirmoyee Devi was honest in her belief in the plaintiff, is not a sufficient reason for holding that she was in fact honest. Even though Jogendra Nath Banerjee was convinced that Ramendra Narayan Roy was dead and had been cremated, he must have realised that Jyotirmoyee Devi might disbelieve that story, particularly as she was not present at the illness, death or cremation. Nay more, he must have known that many people would believe in a miraculous resurrection at the intervention of holy men like sannyasis. Therefore, unless he was already aware of suspicious conduct on her part, he had no reason for thinking at that time that Jyotirmoyee Devi was anything but honest.

TRUE TEST HER OWN EVIDENCE AND CONDUCT

Jyotirmoyee Devi's honesty should be judged by her own evidence and conduct, and not by the opinions of other people formed at a very early stage in the proceedings and judged by her own evidence, it is impossible to regard Jyotirmoyee Devi as an honest witness.

In the proceedings for obtaining probate of the will of Kripamoyee Devi, Jyotirmoyee Devi clearly stated that her brother Ramendra was dead, and that deposition was made in the year 1920. Her letter to Bibhabati Devi in March, 1916 is difficult to reconcile with a belief that her brother was alive.

The learned trial judge says that her belief was in fact no more than a kind of hope but this is not her evidence, nor can it be reconciled with her evidence. Jyotirmoyee Devi said that in 1322 B S (1917) she believed firmly that her brother Ramendra was alive. If within a day or two of the supposed death, members of the party had told her that the body was not cremated and had disappeared from the cremation ground during a storm if thereafter a letter had been received conveying the information that Ramendra was alive if a month or so later, a sannyasi actually came to Jaidebpur with the information that a rich man's son who had escaped from the cremation ground at Darjeeling, was wandering in the company of sannyasis if Akshay Roy went out in quest of Ramendra Narayan Roy and obtained definite news that he was alive if Jyotirmoyee Devi herself heard time and again from sannyasis at Benares that her brother was alive if Satinath, her son-in-law, obtained definite news of Ramendra during his repeated tours in North India and if a dumb sannyasi did, in fact, write the joyful news on a slip of paper if all this was true, then Jyotirmoyee Devi must have had not a mere hope that Ramendra was alive, but a firm belief in his survival. The learned trial judge's interpretation can only be true if all these stories are false, in which case, of course, it is idle to pretend that Jyotirmoyee Devi deposed truthfully.

EVIDENCE NOT FRANK OR TRUTHFUL

In my opinion, perusal of Jyotirmoyee Devi's evidence shows clearly that she was not frank, straightforward or truthful. Her pretended ignorance regarding the answer written by the Maharajadhiraj Bahadur of Burdwan in 1917 is most unconvincing. She fenced with every question in cross-examination and avoided giving a direct answer whenever possible. I regard her evidence about the anonymous letters, the visit of the Madhab Bari sannyasi

and the dumb sannyasi, and the quest of Akshay Roy as untrue, and her evidence regarding her interviews with plaintiff before the drama of the 4th May seems to me quite incredible

If, however, any reliance whatever can be placed on her evidence, it shows that after three separate interviews followed by plaintiff's residence for three days as a guest in her house, she was still not fully convinced that he was her brother. I cannot imagine any sister being in doubt for such a long time. The evidence of Jyotirmoyee Devi, therefore, considered as evidence of recognition, goes to show that plaintiff cannot possibly be Ramendra Narayan Roy.

SARAJUBALA DEVI

Sarajubala Devi is the widow of Ranendra, elder brother of Ramendra Narayan Roy. This lady did not meet the plaintiff till 1924, three years after his appearance at Jaidebpur. It is clear from a letter written by J. G. Drummond, Collector of Dacca, in January, 1925 that this lady espoused the cause of the plaintiff at least from that time. Yet within a month of J. G. Drummond's letter, this lady was writing to the Board of Revenue, describing plaintiff as "the impostor (meaning sadhu who poses himself as the second Kumar of Bhowal)". It seems to me that this lady had a cynical disregard for truth and was prepared to support or disown the plaintiff according as her own interests were affected. The evidence she gave regarding her meeting with and acceptance of the plaintiff is worth quoting in full.

In examination-in-chief she says: "Shortly after that I heard of an enquiry having been made by Akshoy Roy. Akshoy Roy is dead. Thereafter I received the news that the second Kumar has returned. I met him 3 years after the news of the second Kumar's return was received. I met him in the house at Modhu Gupta's Lane in Calcutta. After my meeting with him I have accepted him as my *Debar*." In cross-examination, an attempt was made to get her to amplify this statement. The result was as follows:

Q—How long before this day you had the firm conviction that the Kumar was alive? (Objected to)

A—From the day I saw him.

Q—Before you saw him, did you get any information from your brother, Sailendra Matilal, about the Kumar being alive?

A—My brother went to Dacca in connection with a case, on his return, I asked him, 'What did you see?' He replied, 'I saw the same man.'

Q—How many days before you saw him yourself, did you get this information from your brother?

A—I don't remember exactly. It might be two or two and a half years.

Q—Was there any more doubt about the Kumar being alive when you got the information from your brother?

A—I went on hearing from my brother—that was all.

Q —If you try to avoid answering the question by saying, 'I went on hearing', we shall be forced to submit petition to the court, I am asking you again, did you have any doubt after hearing from your brother? (Objected to)

A —I could not decide anything on any one's word until I saw him myself

Q —Did you have any doubt that the information of your brother might be a mistake?

A —My brother saw him and he was convinced, until I saw him myself I could not decide anything

Q —So long as you will not answer this question, I shall be compelled to be asking this question again and again I am asking you again, was there any doubt in your mind that your brother's information might not be correct?

A —My brother does not tell lies before me

Q —Did you ask your brother as to in what language he had talks with the plaintiff?

A —I did not ask him any such thing as to in what dialect they talked to each other

Q —Did he say anything of his own accord as to in which dialect they conversed?

A —That I do not remember

Q —How long before did you see him yourself?

A —Eight or 9 years ago

Q —Do you remember the Bengali year?

A —I do not remember that

Q —Do you remember the month?

A —It was either Asarh or Sraban

Q —Before you met him, did any one inform you that the plaintiff wanted to meet you?

A —Where? No

Q —Did he enter into your room without giving you any intimation?

A —One evening there were some gentlemen in the house in which I lived, he came and sat there, I sent for him through a boy

Q —Could you see those few gentlemen and the plaintiff from inside the house?

A —No, they could not be seen from inside the room

Q —Then how could you know that the plaintiff had come?

A —I heard afterwards that he came All the gentlemen of the neighbourhood came to see him

Q—What did you hear? You certainly did not hear that he was the plaintiff then?

A—I heard that the sadhu Kumar of Bhowal had come

Q—Do you remember who came and gave the information?

A—I was then engaged in offering my evening prayer. Such talks were going on. Hence I heard them

Q—Had there been any doubt in your mind that he was not the Kumar, then you would not have called him a stranger into your room? Can I take it for granted that you had no doubt in your mind? (Objected to)

A—My brother on coming back said, 'He is that man'. Then he came, I called him into my room, I said, 'Bring him upstairs, I shall see him'

Q—Then you do not deny that you had no doubt in your mind?

A—My brother came and said that, Radhika Goswami came and said that, and other relatives also said that, I heard from them that he was the same man. Thereafter he came to my house and I called him

Q—Did the other members of your house and your officers know from the time you recognised him and accepted him as the Kumar, that you have done so?

A—I did not say anything to any one. He visited my place twice or thrice in the course of a month. He came on invitation. From all these things they might have believed something. I do not speak with the officers."

This evidence does not, in my opinion, carry conviction

PURA SUNDARI DEVI

Pura Sundari Devi This lady is a cousin of the defendant Bibhabati Devi. According to her evidence, the plaintiff went to her house to call upon her. She describes the incident as follows —

"One afternoon my husband told me that a gentleman had come and asked me to see him. (We were then living in a house at Iswar Ganguli Lane) I said I would go. When I went near the shutters of the door I felt queer. How's that? he appears to be a known man but yet not exactly like him. He appears a little fatter. His complexion appeared a little more reddish than what it was when I saw him when I was young. Of course it made no difference. I thought within myself,—'This is the Kumar, Kumar Ramendra'. As soon as I saw him I thought he was Kumar Ramendra. After this I met the Kumar. Immediately after. At once he came up to me and saluted me and addressed me as 'Didi'. He recognised me"

It is not clear from her examination-in-chief when this interview took place. From her cross-examination, it seems that the interview took place after the suit was instituted. It is strange that during the years plaintiff lived in Calcutta before the institution of the suit, he made no attempt to see this lady or Sarojini Devi, her step-mother, but after the suit was instituted, he

approached them apparently to secure their evidence. As they are related to the defendant, Bibhabati Devi, this conduct seems to me suspicious.

There is an obvious lack of frankness in her answers in cross-examination regarding her attitude to plaintiff from 1921 up to the date of her first interview with him, but except for the suspicious circumstances attending the interview, there is nothing else to prove that her evidence is untrue, though her account of the interview is fanciful.

SAROJINI DEVI

Sarojini Devi is also connected by marriage with the defendant Bibhabati Devi. It appears that the plaintiff called on her in October, 1934, i.e., a year after he had deposed, in order to secure her evidence. Her description of the interview was given in these words:

"I saw the Kumar in Kartik last after the last Pujas. He came to my house. He came without giving us any previous intimation. We had not invited him to come. My younger son told me the Kumar had come.

Q—What did he say?

A—He said, 'Ma, come and see who has come.' I ran and saw him from behind the screen. I saw him in the outer room of my younger son. I looked at him for a minute I think. After so looking I recognised him very well. I recognised him as our *jama*. I looked at his face, build and complexion, and recognised him. Then I stepped into the outer room. As I did so, the Kumar saw me. He made his *namaskar* to me and kept looking at me. Then he said 'বড় মামিমা (eldest aunt) (mother's eldest brother's wife), আপনি বড় মোটা হয়ে পড়েছেন, কাল হয়ে পড়েছেন' (you have grown very fat and dark).

I said 'You too have grown fat and a little কাল (dark).' He stayed at our house for an hour that day during this period, he and I had some conversations. On this day he came at 2 or 2-30 P.M. From this outer room I took him into the inner *bari* and gave him refreshments—fruits and sweets. My youngest son and I and the Kumar were alone present then. My mother was also there, but she looked in for a while and left.

Before he left the plaintiff said 'Mamma, you have recognised me, you will have to depose.' I said 'ধর্ম কথা বলব, দরকার হয় বোলো' (will speak the solemn truth, tell me, if necessary)."

I regard this lady as an untruthful witness. Her attempt to prove that the telegram sent by Satyendranath Banerjee from Darjeeling to Uttarpara mentioned death at dusk seems to me transparently dishonest, and the pretended recollection of a conversation with Tincowrie Mukherjee in 1909 seems equally so. I cannot imagine any one placing reliance on her evidence.

SONAMONI DEVI AND SUDHANGSU BALA DEVI

Sonamani Devi is sister of the late Bilasmoni Devi, mother of Ramendra Narayan Roy. She and her sister Sudhangsu Bala Devi were produced by their brother Kedareshwar Bhattacharjee who also deposed as a witness for the plaintiff.

Sudhangsu Bala Devi is one of the persons to whom Jyotirmoyee Devi wrote within a few weeks of the arrival of the plaintiff at Jaidebpur. It is a great pity that that letter is not forthcoming.

Both these ladies heard in 1921 of the arrival of the plaintiff but neither of them went to Jaidebpur to see him. However, they accepted without question the report that he was Ramendra Narayan Roy. Later, when the plaintiff was residing in Calcutta, they were invited by Jyotirmoyee to visit her, and they met the plaintiff then and on subsequent occasions. Their acceptance of the plaintiff as Ramendra Narayan Roy merely shows their faith in their brother Kedareshwar and their niece Jyotirmoyee Devi.

KEDARESWAR BHATTACHARJEE

Kedareshwar Bhattacharjee is brother of the two ladies just referred to, and uncle of Ramendra Narayan Roy. He states that he had heard of the plaintiff's arrival and had gone, without invitation and without announcing his impending arrival from Banaripara in Bakaiganj District, to Jaidebpur. On the way from Jaidebpur station to Jyotirmoyee Devi's house he happened to meet the plaintiff, and each recognised the other immediately. This was within two or three weeks of plaintiff's first declaration of identity, when plaintiff still had a beard and matted hair. This witness was previously in the service of the estate and must have known Ramendra Narayan Roy well. He had been in the service of the plaintiff for some years before he deposed, and was prepared to go to such lengths as asserting that Ramendra Narayan Roy could not only not sign his name in Bengali, but did not even learn the Bengali alphabet. I am not convinced that he was a truthful witness.

RADHIKA MOHAN GOSWAMI

Radhika Mohan Goswami is a cousin of the late Rajendra Narayan Roy, father of Ramendra. His welcome to the 'nephew' who had been lost for so many years must be unique. The description of his first two or three meetings with plaintiff is best given in his own words.

"Before I first met the plaintiff after his return I had heard at Sinhajani that the plaintiff had returned. I left for Jaidebpur at once. I read nothing in the papers. I knew he was staying then at Jaidebpur. I heard that he had come here, when I was on my way, the state of mind was doubt. I reached Jaidebpur at 2 P.M. I went to my *basha* at Jaidebpur and at 3 or 4 P.M. went to Jyotirmoyee's house. I don't remember if I asked her whether the second Kumar had come back. I went there alone. I met the second Kumar—the first person I saw there. I did not see Jabboo and the rest. The plaintiff was seated in a chair and lots of men on the ground before him, say 300 or 400 men. I went by his back and got at him. I did not bow to him, as he was to bow to me if he was the second Kumar, and he was said to be him. As I reached there I did not notice whether he was talking. I sat in a chair that touched his, and stared at his face and belly—his whole body. I did so for 10 or 15 minutes, looking at his eyes, eye-brows and other features. He was also staring at me and saw me from head to foot, my features and

the rest I was the first to speak I asked 'Do you recognise me?' He said 'কাকা' (uncle)

Only this word, nothing else No other word passed his lips Then I rose and left His word কাকা (paternal uncle, father's younger brother) was uttered in a হিন্দি জড়িত বাংলা (Bengali mixed with Hindi) manner Not like a *Khotta's* way of pronouncing Bengali, but there was a suggestion of Hindi

After I heard the word কাকা (paternal uncle, father's younger brother), I left the place and two days after I left Jaidebpur Then I came and went away two and three days About 15 days after the day on which the plaintiff uttered 'কাকা' (uncle, father's younger brother), took place my second conversation with plaintiff It consisted when (sic) saying 'কাকা কেমন আছেন' (uncle, how are you?)

That was also হিন্দি জড়িত (mixed with Hindi)—Bengali with an *abhas* (suggestion) of Hindi I did not ask him why it was so I did not, as I was grieved and he was grieved too I frequently saw him shed tears I saw him weep first at Jyotirmoyee's house—5 or 7 days after he spoke 'Kaka' He and Jyotirmoyee were speaking

I don't remember my next conversation with him I had conversations, but nothing long except 'আপনি কেমন আছেন' (how are you?) That was the conversation during 1 or 2 visits Then gradually his conversation grew longer It grew longer some 15 days after he first said কাকা (uncle, father's younger brother) My second conversation was how long after I cannot say

About a month after his 'কেমন আছেন (how are you)' began his longer conversation I do not remember what—but it was on various topics Plaintiff still talks হিন্দি জড়িত (mixed with Hindi) Bengali as before I never asked him why his Bengali was হিন্দি জড়িত (mixed with Hindi) I heard it said that poison had thickened his tongue I saw the tongue I did not see his tongue for this purpose, but I saw it as he spoke—it was 'unnatural' His tongue was faintly thinner and ordinary "

This evidence seems to me unworthy of serious consideration

KUMUD MOHAN GOSWAMI

Kumud Mohan Goswami is also a cousin of Ramendra Narayan Roy's father His first interview with plaintiff is almost as ridiculous as that of Radhika Mohan Goswami His own description reads

"The second Kumar used to call me Sadhu Kaka I met him after his return I met him in Baisak, 1328, at Jyotirmoyee Devi's *bari* at Jaidebpur When I saw him I recognised him I saw him for 4 or 5 minutes and then recognised him I asked him 'আমাকে চেন, (do you know me?)' He said, 'সাদু কাকা' (Sadhu Kaka—paternal uncle) Nobody pointed him out to me nor did anybody point me out as Sadhu Kaka to him I had no other conversation with him that day I stayed there for a day or two I had no conversation with him during these days "

His evidence carries no more weight than that of his cousin Radhika Mohan

LAL MOHAN GOSWAMI

Lal Mohan Goswami is a brother of Radhika Mohan Goswami, whose evidence has been discussed above. He was at Jaidebpur at the time of plaintiff's first visit. He claimed to have recognised the plaintiff even before the latter had visited Jyotirmoyee Devi for the first time. His evidence on the point is as follows:—"The second Kumar returned home in 1327 I saw him 2 or 3 days before the Chaitra Sankranti, at Madhab Bari at Jaidebpur. Madhab Bari is to the west of Jaidebpur Rajbari. I found him seated under the *kamini* tree in courtyard of Madhab Bari. His body was then smeared with ashes all over and he was in a *lengthi* (loin cloth). I noticed his hands, feet, eyes, limbs—I looked at them closely. I could not quite recognise him because his body was smeared with ashes, felt as if I knew him, and again, as if he might not be the same man—this was because his body was smeared with ashes. This was immediately before dusk. And there were the hair and beard.

Next morning I saw him in the *gol* verandah in the ground floor of the Rajbilas. At that time there was no ashes on his body as he had bathed. Then I recognised him.

I saw him again the next following day. On that day he left after taking his meals. He took his meals at Budhu Babu's house. His body was smeared with ashes that day.

I saw him next 14 or 15 days after at Budhu Babu's house. At that time he had ashes smeared on his body. Then I went on seeing him every day for 2 or 2½ months. On the 2nd day at Jyotirmoyee's house—the day after the day on which I saw him after 14 or 15 days—the second Kumar had ashes on his body. On the 3rd day also he had the ashes. Next day the plaintiff came after a bath and had no ashes on his body. On the day on which he had ashes on his body, people, many people, came and saw him at Jyotirmoyee's house.

On the day his body was clean of ashes, I saw him at about 10 A.M. At the time all the relations were present.

Q—Did they recognise him that day?

A—Yes, they did.

I had recognised him before at the *gol* verandah. The same day, at about 2 or 3 P.M. after meals,—the day on which his body was clean of ashes—he declared his identity. Before that declaration of identity I had talk with Budhu—I had talk with Budhu about the second Kumar's body. That is, about his marks, sign and *অকৃতি* (appearance)."

And in cross-examination he says

"I saw the plaintiff at Madhab Bari just at sunrise on the day I saw him later at *gol* verandah. He was then alone. His body was not then besmeared with ashes. It looked that he had bathed. I can't say where he had bathed, because when I went to the Madhab Bari *ghat* I did not see him under *kamini* tree. The *ghat* was at the west of the Madhab Bari. I did not see him while I was at the *ghat*. I saw him after I came to the courtyard of

Madhab Bari I saw him, as I faced east, going towards the north where there is door leading into the Rajbilas. As he walked towards that I followed him. I followed him until he reached *gol verandah*. The sun was then about to rise. Two or three minutes after he reached the *gol verandah* he began to smear his body with ashes—the whole body, hands, feet, back, face, not the hair. Nobody else was then present—it was very early then and most people were in bed. I was 1 cubit or so from him when he was smearing ashes on his body. I had seen him before he had started smearing his body with ashes. When I was seeing him, he had seen me. I can't say if he noticed I was looking at him closely. I did not try to speak to him.

Q—Did you see him closely before he rubbed ashes on his body?

A—Yes

Q—Did you recognise him then?

A—Yes

He could see me then. He was sitting in a natural way. It did not strike me that he was beginning to conceal his identity. Then he rubbed his body with ashes. I stood by. I stood there for 5 or 7 minutes after that. During the period I stood staring at him, I did not notice if he was noticing me during this period. He did look at me. During the 5 or 7 minutes I found him seated in a natural way—without any efforts to conceal his identity. During these 5 or 7 minutes nobody else came. After the period I left and went to my *basha*. After that I did not see him at *gol verandah* that day. I did not see him at *gol verandah* afterwards, nor did I go to it. So long as I was at *gol verandah* nobody was there. I did not try to speak to him that day. We had no talk that day.

That day I saw him at Madhab Bari at midday. He was alone, except for the Punjabees and servants at Jhikur *bari*. The same day at dusk I saw him again under the *kamini* tree. At that (*sic*) was seated near him a stranger, a Bengalee, with glasses on. I did not know him. I had not seen the stranger before. I did not see him afterwards. That day at night the plaintiff went to the house of Jyotirmoyee Devi. I saw him there at 8 or 9 P.M. I found him there. I saw him there for an hour or so. I came away and he stayed on."

Though he had recognised his nephew, he never greeted the latter as a nephew, nor did he tell any one that he recognised him. The only reason he could give for this extraordinary conduct was that he "did not tell people that I had recognised the Kumar, as it concerned a high family and I could not suddenly say that, and thought I should await development and see what the sisters and relations said—I kept my knowledge a secret at that moment."

The witness also deposed about the talk concerning *kushaputtahka*. I have no doubt that most of his evidence was untrue. The story of his recognition of plaintiff is simply incredible.

SURESH CHANDRA MUKHERJEE

Suresh Chandra Mukherjee is a relation of the Bhowal family. He claims to have recognised plaintiff as soon as he saw him.

This witness is an unscrupulous liar. He even went so far as to say that "plaintiff and Jyotirmoyee do not generally live together. It is not true that the plaintiff has been living with Jyotirmoyee for 12 years and a half."

He too supports the case about Akshay Roy's quest and the talk of *kushaputtahka*. An utterly unreliable witness.

BASANTA KUMAR MUKHERJEE

Basanta Kumar Mukherjee gave the following description of his first meeting with the plaintiff.

"Long afterwards I saw the second Kumar at Dacca. It was in 1327 or 1328, may be towards the end of 1327 or 1328. It was in a Bhadra at Jyotirmoyee's *basha* at Dacca. The plaintiff was then upstairs. I had gone without any previous intimation. I found the plaintiff seated. He looked long at me and I looked at him. Then I thought he was the second Kumar. I recognised him. He looked on and turned his face as though he did not know me. Then I asked 'Don't you know me?' Then he said 'কে আপনি কি বসন্ত দাদা' (who, are you Basanta Dada—elder brother?)

Then he made enquiries about the members of my family and asked about a daughter of mine called 'বুড়ি' (Buri)—'বুড়ি কেমন আছে, কত বড় অইচে, বিয়া দিচেন কি না' (How is Buri, how old is she, have you given her in marriage?) I said, Buri had grown and had been married but was unfortunately then insane. The second Kumar expressed his regret. Then he asked 'ব্যাভাণী ঠাণাণ কেমন আছে' 'How is Batasi Thakurani (Tharan)?' ব্যাভাণী ঠাণাণ Batasi Tharan (Thakurani) is my wife. Second Kumar used to call her that.

I said 'ভাল আছে' (Doing well). Then he asked 'কালী ঠাণাণ কেমন আছে' (How is Kali Tharan—Thakurani?) I said, 'She is well'. He used to call Suresh's wife 'কালী ঠাণাণ' (Kali Tharan).

There was no further conversation that day. I had heard before the interview that a meeting at Jaidebpur had acknowledged the Kumar. And also that Jyotirmoyee had acknowledged him as her brother. When I recognised him I had no doubt, and all doubt vanished when he made enquiries about my family."

This evidence is not unnatural except possibly as regards the omission of the witness to put to plaintiff any of the questions one would naturally expect him to put, *e.g.*, Where have you been? What happened to you? Why didn't you come back earlier? The witness deposed as though the meeting was an ordinary meeting with a friend who had not been seen for some time.

BILLOO AND SAGAR

Jitendra Chandra Mukherjee and *Satmath Banerjee* have supported Jyotirmoyee Devi in every false story she has given.

CHANDRA SEKHAR BANERJEE

Chandra Sekhar Banerjee is another son-in-law of Jyotirmoyee Devi. He supported her with regard to the talk of *kushaputtahka* and the arrival

of the anonymous letter His description of his recognition of plaintiff is most unconvincing He deposed as follows

"Then I went to the house of Jyotirmoyee Devi I found the plaintiff lying down in a room on the east There were other people in the room My eyes fell upon his whole body as he lay there, and I scrutinised his features, and I lifted up his beard and saw the Adam's apple which used to be prominent As I did that the Kumar burst into laughter I recognised him as he laughed Before that I had not quite recognised him, but as he laughed, his whole appearance, as I knew it, flashed before me For instance, I may not recognise a man at first sight, but if he laughs or puckers his brow and one would sometimes know him at once His complexion was the same as that of the second Kumar I remember the colour of the second Kumar's eyes—it was brownish, such as too Jyotirmoyee Devi's eyes, but more reddish The plaintiff's eyes—their colour—were the same Their look was the same—the way he looked was very 'perceptible' It has remained the same The Chhoto Kumar's eyes were of blue colour Budhu Babu's eyes were more blue than the Chhoto Kumar's eyes

At the moment I looked under the plaintiff's beard for the Adam's apple, Jyotirmoyee Devi was not in the room She came in later She pointed to me and asked plaintiff 'একে চিনিস' (Do you know him)? Plaintiff said 'No' Then Jyotirmoyee Devi asked me 'তুমি চিনতে পেরেছ' (Do you know him?) I said I would not say that now "

"He spoke in Hindi not with me, but with others With me he spoke in Bengali He spoke Banua 3 or 4 days after I first saw him at the bank of a tank The spot was 5 or 6 cubits from the room in which I first met him He was speaking to Banua women These women were speaking to him, and he was speaking to them in something like their own language, but not exactly like them I would hardly understand Banua myself and can follow it to some extent, if any speak slowly, and I can't speak the dialect as the plaintiff did When I saw him carry on conversation with Banua women in their own tongue, I became absolutely certain as to his identity After that I accepted him as the second Kumar "

If this evidence has any meaning, it shows that witness was not able to recognise the plaintiff with certainty from his features, but was convinced of the identity by the fact that plaintiff spoke Banua

KULADA SUNDARI DEVI

Kulada Sundari Devi is one of the old ladies connected with the family, who pretended to have recognised the plaintiff as soon as she saw him at the Madhab Bari in the middle of April, 1921

She used to get an allowance from the estate which was stopped in 1913 Her son was in the service of the plaintiff and was apparently active in assisting in the prosecution of the suit

She described an extraordinary conversation which she is supposed to have had later with plaintiff at Dacca

Her conduct at Jaidebpur is difficult to reconcile with her supposed recognition of the plaintiff

AKHIL CHANDRA PAKRASHI

Akhil Chandra Pakrashi is a brother-in-law of Jyotirmoyee Devi's nephew Jitendra. This witness claimed to have recognised plaintiff almost at once, and asserted that plaintiff greeted him as 'behar'. The witness deposed to the talk about *kushaputtalika*, which I believe to be a fiction and his utter lack of curiosity regarding plaintiff's experiences during his 12 years' absence seems to me most unnatural. I cannot believe that this witness was telling the truth.

KAMAL KAMINI DEVI

Kamal Kamini Devi claimed to have half recognised plaintiff at Saibalini Devi's house at Dacca in April, 1909. Later on she went to Jaidebpur and was completely satisfied as to his identity. She deposed to conversations with the plaintiff which completely contradict his present case. She said that he told her that he wanted to escape from the sannyasis, but they kept him confined, that he told the sannyasis about his home and relatives, but they would not let him go, that they even stood guard over him when he went to answer calls of nature.

ANANTA KUMARI DEVI

Ananta Kumari Devi. This is one of the two ladies who was persuaded to give the ridiculous story of Sarif Khan's revelation. She deposed to the talk of *kushaputtalika* and to the quest of Akshay Roy. She pretended to have recognised the plaintiff at once, but though she met him frequently before the 4th of May, she never spoke to him, and in cross-examination she said that she did not even discuss her recognition with Jyotirmoyee Devi.

SIVAMOINI DEVI

Sivamohini Devi said that she recognised the plaintiff as soon as she saw him. She fenced with every question in cross-examination. She pretended that she never had any curiosity as to what happened to plaintiff during the 12 years of his absence.

Kiranmoyee Devi and *Ashutosh Ganguli* are two other relatives of the family who depose in plaintiff's favour. There is nothing to note particularly in their evidence.

This is the full list of relatives according to the lower court judgment, who have deposed on behalf of the plaintiff. As pointed out by the learned trial judge, practically none of the relatives have deposed for the defence.

The fact that the relatives of Ramendra Narayan Roy have almost all deposed in favour of the plaintiff is a circumstance in his favour. The evidence they have given is almost sufficient in my opinion to prove that he is an impostor. The conduct of all of them was unnatural. The evidence of most of them teems with falsehoods. When it is realised that many of them will profit appreciably if plaintiff succeeds, it is apparent that their evidence cannot carry conviction.

WITNESSES OTHER THAN KUMAR'S RELATIVES

But apart from relatives, there are numerous witnesses for the plaintiff who must have known Ramendra Narayan Roy intimately. Their evidence too requires examination, more particularly as many of them are much more independent and trustworthy than the relatives discussed above. I shall examine the evidence only of those witnesses to whom the learned trial judge has referred. It would be a waste of time to consider in detail the evidence of less trustworthy and less competent witnesses. The first of those witnesses is *Mokshada Sundari Devi*.

MOKSHADA SUNDARI DEVI

This is another of the old ladies of Jaidebpur who was persuaded to give the ridiculous story of Sarif Khan's confession. She swore to the talk of *kushaputtalika* and to the quest of Akshay Roy. She claimed to have recognised the plaintiff from behind by his walk.

She gave an account of a discussion between plaintiff and Gobinda Mukherjee as to the respective merits of the Vedas and the Gita—which is obviously pure fiction.

It is difficult to attach any value to her evidence.

REBATI MOHAN GHOSH

Rebati Mohan Ghosh is a senior pleader of Dacca, and apparently knew Ramendra Narayan Roy well. He went to see the plaintiff shortly after the 4th of May and described the experience thus.

"Next morning I went to Jaidebpur and went straight to Jyotirmoyee's house from the railway station. Reaching there I heard that the man had gone to bathe in the Chilai—which is a narrow *khal*. Then I heard, nearly half an hour after, that he had returned from his bath. I noticed people going towards a spot and heard that he was seated in a chair over a *chauki* under a mango tree. Then I followed the people towards the spot, and I stood on the back of a crowd surrounding him and far from him. I could see him from where I stood. He had on a cloth round his waist without *kacha* or *kocha*, and a towel on this part of his chest (shews a part of the chest) and his hand upon the towel. Some time after he lifted up his towel covering his mouth including his upper lip. When I first saw him I saw he had a beard. The second Kumar, had no beard before he went to Darjeeling. I saw the upper part of his face resembling the second Kumar's, but because of the beard I could not fix his identity. When he covered his mouth and lips, I was startled, as the upper part of his face looked exactly like the Kumar's. Then I thought it possible that he was not an impostor and recollected all that I had heard. When I was in this state of mind, the man beckoned to me with his hand to come to him. I began to make my way through the crowd, as seeing him, hasten to me, the crowd made a way for him. At this moment when I had not come up to the Kumar, I heard somebody crying out, 'আলবাং দেখেছে, আলবাং দেখেছে', 'must have seen, must have seen'. This man thrust his way through the crowd and went up to the man, and put his hands into his private parts,

and then arose a cry 'marks of *bagi* has been found! Marks of *bagi* has been found!'

Then somebody said that there was the sun there, so the plaintiff went and sat on a chair in a verandah, and people sat on a *dhala bichhan* spread in front of it in the verandah I got at the back of all again '

I find it impossible to believe that the incident of a man thrusting his hand into plaintiff's private parts was genuine and spontaneous. If the story is true, it must have been pre-arranged like the setting of the declaration on May the 4th. As no one else mentioned the incident, I incline to regard it as pure invention. This witness pretended that Ranendra Narayan Roy was not convinced that his brother's body had been cremated at Darjeeling. This is contrary to the evidence of Jyotirmoyee Devi and all the other members of the family who made out a case that Ranendra was too easily satisfied by the assurances of Satyendranath Banerjee. The letter of Ranendra Narayan Roy to the Government Pleader of Darjeeling dated 25th May, 1909, offering to acquire the plot of land where his brother was cremated disproves the witness's evidence on this point.

The witness had another extraordinary story of being engaged to teach Ramendra English by stealth. I do not believe a word of the story, and consider that the witness was trying to bolster up the case of Ramendra's utter ignorance. I regard this witness as unworthy of credit.

PARSWANATH NAG BISWAS

Parswanath Nag Biswas, an old man of 77 years and President of a Union Board. His description of his first meeting with plaintiff and his recognition of the latter was given in these words: "Long afterwards, I heard that the Kumar was in Rup Babu's *ghat*. This I heard 4 or 5 years after his departure from Darjeeling. Hearing that I did nothing. Then I heard sometime after that he was at Jaidebpur. Hearing that I went by boat to see him. Baktarpur is four hours' boat journey by Jaidebpur. I went to Budhu Babu's house and found him seated on a chair under a mango tree. At that moment two or four men were present. I looked closely at him for a long time and asked 'Do you know me?' (আমাকে চিনলে কি না?) He stood up and said 'আগুনাবে চিনব না? আপনি বক্তাবপুবেব পার্শ্বনাথ বিশ্বাস' (shall not I know you, you are the Parswanath Biswas of Baktarpur).

I do not remember any member of his family being present then. After that there was no further conversation as more people came up and I moved away. Thereafter I met Budhu Babu and Jabbo Babu and some others of their family. I spoke to them. They asked 'আগুনাবে চিনলেন কি' (Don't you recognise my uncle?)

I said, yes, I have, after closely looking at him for a long time."

His son's father-in-law was the President of the society formed to get the plaintiff accepted, though the witness pretended ignorance of this fact.

From the description of the interview, it is not certain that the witness would have recognised plaintiff, if the latter had not apparently recognised the witness. I say—'apparently', because plaintiff had two or three companions with him as this old man approached, and they could easily have said who

was approaching In my opinion, this is one of the witnesses who was induced to accept plaintiff owing to his apparent knowledge of the past, and not owing to their recollection of his features

RAJ KUMAR MUKHATI

Raj Kumar Mukhati was a mukhtear practising at Mymensingh He went to Jaidebpur on the day of the monster meeting organised to secure plaintiff's acceptance by the public The witness described the meeting with plaintiff thus

"I heard that the second Kumar had come back when I was at Mymensingh I went to see him I found him at Jyotirmoyee's house at Jaidebpur This was some 11 or 12 years ago in a Baisakh or Jaistha After seeing him I recognised him I recognised him after seeing him for 4 or 5 minutes At that time (there were) many people, including Babu Ananda Roy, pleader, and my uncle-in-law, Surja Bhattacharjee The latter is dead That was the day (of) the great meeting at Jaidebpur The plaintiff came to this meeting on an elephant I went to that meeting I went from one side of the meeting to another It was a very long meeting All said—'He looks likely like our Kumar' On the elephant there were probably others besides the plaintiff, but I don't recollect who I do not know whether on that day the plaintiff saw me or recognised me

Subsequently next day I met the second Kumar in the morning I saw him at Jyotirmoyee's *bari* At that time there were no people present except a servant or the like, that day he saw me He spoke to me He looked at me for a few minutes and said 'জামাই কেমন আছে (how is the son-in-law?) and then he held me by the hand and made me sit down saying, 'বস' (take your seat) I did not stay a long time After then I did not see him again until yesterday I had other talk with him on the day he spoke to me, but I don't remember Yesterday we exchanged usual inquiries "

It seems to me probable that this witness honestly believed plaintiff to be Ramendra Narayan Roy

V T STEPHEN

V T Stephen, an Armenian jute merchant of Dacca town He claimed to have known Ramendra Narayan Roy well, and to have recognised plaintiff instantly The witness deposed that after he first saw the plaintiff, the latter called on witness several times The witness never questioned him about his experiences during his 12 years' absence The witness says, 'I did not press the question, as I thought he might feel 'bad', that is, 'depressed', 'sad' "

MANINDRA MOHAN BASU

Manindra Mohan Basu was an assistant master in a school at Jaidebpur in 1908, and must have seen Ramendra Narayan Roy fairly often, but there is nothing to suggest that he was intimately acquainted The witness went to

Dacca during the pujas of 1931 and took the opportunity of going to the house in Armanitola to satisfy his curiosity regarding the plaintiff. The witness said that he took a close look at plaintiff for 3 or 4 minutes and was then able to recognise him. He left without speaking to plaintiff and does not seem to have met him again until a day or two before he deposed. This witness supported the story that there was a proposal to perform *kushaputiahka*—which I regard as a fiction invented for the purpose of this case.

MESBAHUDDIN AHAMMAD

Mesbahuddin Ahammad did not pretend that he was intimate with Ramendra Narayan Roy. He used to go to Jaidebpur fairly frequently and see the Kumars, but did not talk to them. He remembered talking with Ramendra on one occasion only. His description of his recognition of plaintiff was as follows:

"I heard the second Kumar had returned. This was 11 or 12 years after he had left for Darjeeling. Hearing of his return I went to see him. I saw him. He was seated on an easy chair on the southern *verandah* of Budhu Babu's house. I found him so seated. I knew Budhu Babu from before. Below the *verandah* at the time the plaintiff was seated there were 24 or 25 men. I saw him from about 6 or 7 cubits. Seeing him I recognised him. I did so after looking at him for 2 or 3 minutes. Within 10 or 15 minutes after my arrival Budhu came and took the second Kumar in for his meal. Budhu Babu knew me. Then I came away."

"There was a big meeting at Jaidebpur which I attended. This was 5 or 6 days before I had seen and recognised him. The second Kumar came to it on an elephant. Probably Adinath Chakrabarty was the President of that meeting. All in the meeting acknowledged the Kumar as the Kumar and cried *Jaidham*."

The cross-examination of the witness showed that he was quite willing to speak untruths thus —

"When I heard that the second Kumar had come back, I did not hear he had come back in the garb of a sannyasi. When I went to see him I did not hear that Jyotirmoyee had acknowledged him as her brother. I had heard he was staying at her house."

The witness deposed that Bibhabati Devi herself begged him to make sure that nobody from his part of the country deposed for the plaintiff. I do not believe this story and I am not convinced that this witness was a witness of truth.

HEMENDRA KISHORE ACHARJEE CHOWDHURY

Hemendra Kishore Acharjee Chowdhury was apparently very intimate with Ramendra Narayan Roy. He was at Puri when he first heard of plaintiff's arrival, and on his return home, he went to Dacca to see plaintiff. His description of the meeting reads:

"I returned to Mymensingh. Some two days after I came to Dacca to see the Kumar. Before that I had read he had been acknowledged by

Jyotirmoyee, Satyabhama and the family That did not satisfy me—I wanted to see for myself I reached the house at Armanitola between 1 and 2 p m I went in and across a room containing a table, went upstairs I got into the door of a room upstairs in which I could hear conversations were going on I saw the back of a man, with matted hair hanging down his back, and having a meal, and Jyotirmoyee Devi washing his hand The latter saw me and said ‘Oh, when have you come?’ She came up to me and said ‘Let us sit in the next room’ We got into that room I found Budhu asleep in that room I woke him Jyotirmoyee began talk as women do—about her bringing her brother and not knowing what was going to happen, and that people were saying all sorts of things, and she talked in the way women do At that moment the man with the জটা (matted hair) came in and said ‘দাদা আপনি কখন এলেন?’ ‘Dada (elder brother), when have you come?’; ‘হেমদা আপনি কখন এলেন?’ ‘Hemda, when have you come?’

I am not giving his exact words, but words to that effect in my own words Bhowal Bengali is different He, plaintiff, talked in Bhowal tongue which people of our family cannot imitate

Saying as above, the man with matted hair sat on a chair in the room in which I was I looked at him, as he was talking, and recognised him as the second Kumar I was “thoroughly convinced” that he was so For curiosity’s sake I looked at his feet, as he had long hair and beard as long—some 3 or 4 fingers long, and as I looked at his feet the old doubt vanished, what little doubt may have lurked vanished

My second brother came home after 10 years’ residence in England I did not take a second to recognise him ”

The last few sentences suggest that the witness was not wholly satisfied until he had examined plaintiff’s feet, even though plaintiff had welcomed him by name

NABENDRA NATH BASAK

Nabendra Nath Basak, a merchant of Dacca, claimed to have known all three Kumars well, but to have known Ramendra better than the others In describing his first meeting with plaintiff, he said “I saw him and recognised him, but took some time to look at him before I did so I had to look at him for about ten minutes before I recognised him” * * * * “During my conversation * * I put some questions to him to confirm my belief that he was the second Kumar He answered them to my satisfaction”

JOGESH CHANDRA ROY

Jogesh Chandra Roy was headmaster of Jaidebpur High School from 1906 to 1911 He must have seen the Kumars frequently, though he had but a ‘casual acquaintance with Ramendra’ This witness deposed to the talk of *Kushaputahka*, the visit of the Madhab Bari sannyasi and the quest of Akshay Roy

He described his meeting with plaintiff at Armanitola in Dacca in June, 1921

“I went without a previous intimation and unasked I entered the house and found a lot of people downstairs among whom I noticed one man whom

I knew He was Sures Chandra Mukherjee The second Kumar was not there I asked Sures Babu where the Kumar was He said "He is upstairs " I told Sures Babu not to tell anybody I had come, and asked him to take me upstairs He and I stood a while, and then both went upstairs together I found the Kumar seated in an open roof facing a room in the second storey I stood facing him, stood about 1 or 1½ cubits from him, and had a look at him for a minute or two After that look I thought from his appearance that he was the Kumar During the 1 or 2 minutes I looked at his hair, eyes, 'cut of his face', hands and feet Seeing these I was convinced that he was the Kumar After that I asked the Kumar 'Do you know me?'

He said after looking at me for a while 'হেড মাস্টার বাবু' (Head Master Babu)

He looked at me for two minutes or so before he said that Nobody else was present except Sures Babu, and Sures Babu did not give any hint of any kind whatsoever

After saying, 'Head Master Babu', the Kumar said 'কুর্শি লাও' (bring a chair) Sures Babu brought a chair, and I took my seat on it I was there for 10 minutes in all "

In cross-examination the witness said

"On the day I went to see the plaintiff I met him a minute or a minute and a half after I spoke to Sures The plaintiff was alone seated at the roof—no other person was present He used the words 'Head Master Babu' (হেড মাস্টার বাবু) He used these very words He said nothing else After this I was there for 10 minutes During this period he and I sat there, neither uttering a word I made no enquiries into where he was, how he was, and the like I had cautioned Sures Babu, as before I had seen him the state of my mind was that the plaintiff might or might not be the Kumar I cautioned Sures Babu, as I wanted to test I had kept an open mind Might be or might not be is not doubt, as doubt means absence of belief That is what I teach my students The opposite of disbelief is doubt I cautioned Sures Babu, as it might be that he would go and tell the plaintiff who I was Besides Sures Babu there were a roomful of men downstairs I can't say if they were all waiting to see the Kumar I did not sign any visitors' book I did not whisper my caution to Sures Babu, but spoke low, but the idea of anybody hearing did not occur to me, as the people there were not known to me "

I am not satisfied that the witness was a truthful witness and his description of his meeting with plaintiff is singularly unconvincing

CHARU CHANDRA DAS GUPTA

Charu Chandra Das Gupta was one of the witnesses who went to see the plaintiff on Buckland Bund before he had set up his present claim The witness went to see him, deliberately, having heard the rumour that he was Ramendra Narayan Roy, but after seeing him, was unable to recognise him The witness subsequently saw plaintiff driving in the streets of Dacca, but still could not recognise him He recognised him at the time of the *sraddh* of Satyabhama Devi The witness admitted that he saw plaintiff 12 or 14 times on Buckland Bund without being able to recognise him, though

he looked at him closely each time to discover if he was the Kumar. It is obvious that his ultimate recognition has no value.

HEMENDRA LAL DAS

Hemendralal Das saw the plaintiff many times on Buckland Bund before the declaration of the 4th of May, and suspected that he might be Ramendra Narayan Roy but was not convinced. The fact that the plaintiff's body was besmeared with ashes prevented recognition. Thereafter he saw plaintiff again on the day of the monster meeting, and after looking at him for 3 or 4 minutes recognised him. The witness insisted that before he saw the plaintiff on the day of the monster meeting at Jaidebpur, he had not heard that Jyotirmoyee Devi had acknowledged him as her brother. I find it difficult to believe this statement.

Even if this witness was honest, his recognition of the plaintiff was of a very hesitating and doubtful nature.

BHUPENDRA MOHAN GHOSH

Bhupendra Mohan Ghosh did not meet plaintiff until April, 1922. By that time plaintiff had shaved off his beard, and, according to his case, was then looking exactly the same as Ramendra Narayan Roy had looked. Witness looked at him for 1 or 2 minutes and recognised him.

N K NAG

N K Nag is a witness on whom the learned trial judge has placed great reliance. He did not meet plaintiff after his arrival at Dacca in 1921 until January, 1925. The witness's description of the meeting was as follows —

“Q—Then how came you to see him in 1925?”

A—On the occasion of a party to celebrate the conferring of the title of Raja on Janakinath Roy I found the plaintiff's name in a list of people invited. A committee had been formed to organise this party. I was the Assistant Secretary to this Committee and had to do everything, and Mr S R Das was the Secretary and the Maharaja Tagore was the President. I came across plaintiff's name in the list at Mr S R Das's house in Hungerford Street. When I came across this name, I strongly objected to his being invited. I expressed my objection to Mr S R Das and to Ramendra Nath Roy, youngest son of Raja Janakinath Roy. I took exception to the name, as he had been declared an impostor. Mr Ramendra Nath then told me something. Then I said, ‘All right, I am going there to verify whether he is the Kumar.’ And I also told him, ‘If he is the real Kumar, he is bound to recognise me.’ After I said this, the issue of the invitation to him was postponed.

Immediately after this conversation I left for the Kumar's place. I got his address from Ramendra Nath Roy, son of Raja

Janakinath Roy When I started I was in European costume I had a hat on It was cold season I went in a taxi I got to the house where the plaintiff was living As I entered the house I found two gentlemen talking with another gentleman This was in a room on the ground floor I saw the faces of the two gentlemen, but not of the third gentleman they were talking to The third gentleman had his back towards me As I entered one of the two gentlemen whose face I could see asked what I wanted I said I wanted the 'Sannyasi Kumar' The third gentleman at once turned round and looked me in the face, while I looked him in the face About 3 or 4 minutes we were thus looking at one another Then he, third gentleman, rose from his chair and said I am giving his own language—'আবে নাগা' (Hallo! Naga) Saying this, he caught hold of my hands and put me on a chair and said 'সাহেব ইচ্চন' (you have become a *sahib*!), 'বিলাত গেছলি' (Did you go to England?)

Q—Before I proceed further with this I ask you this Did the second Kumar hear before he left for Darjeeling that you were contemplating going to England?

A—Yes

"I might have told him, or my cousin might have told him, or Surendra Bose might have told him—I don't remember who exactly had said it, but one or other of us Before he went to Darjeeling the second Kumar used to address me as Naga, or Naga Beta (নাগাবেটা), Naga Hala নিবমইলা (Nirmaila)

I had recognised him before he put me into a chair I asked him in Bengali 'আপনি কি কবে জানলেন যে আমি নাগা?' (How do you know I am Naga?) He said 'তুই বল, তুই নাগা না?' (You say whether you are not Naga?) I said 'আমাব প্রশ্নে ত উত্তর নব এটা' (That is no answer to my question)

Then he mentioned the name of my father, and of my uncle Rai Bahadur Issar Ch Ghose, and also of my cousin, Jnanendra Nath Ghose, Rai Bahadur's son, and of Surendra Bose

I said 'একথা আপনি জানতেও পাবেন ক কেউ (?) হয়ত কবে দেছে আমি আসব' (you might have known this fact, some one might have told that I would come)

Then he said 'আজ্ঞা আবও কোনও একটা কথা যদি বলি যা তুই আব তোব বাবা ছাড়া কেউ জানে না' (All right, if I say something else which none but you and your father know) I said 'আজ্ঞা বলেন' (All right, say) He said 'কোনও একবারে—বেশী রাত্রে' (In one night—at a late hour of night)—I am giving his words as far as I can recollect, but about বেশী (late hour) I am not sure—'তগো বাড়ীতে গেছলাম' (I went to your house) I asked 'What for?' He said 'তোমাব বাবাব থেকে টাকা আনিছিলাম' (I brought money from your father) I said 'তা হতে পারে (that might be) He said 'তা হতে পারে কিন্তু দবজা ধাক্কাবার কথা মনে পড়ে কি? যে জোবে ধাক্কা দিছলাম মবা মাপুষও জেগে উঠে। তোবা সেই ধাক্কাতে কেউ জাগস্ নাই, তাবপব যখন আবাব ধাক্কা দেই তখন উপবেব যব থাইকে দবজা খুল্লি, বল্লি কে? আমি বল্লাম লাইমাই দেখ্না কো' (That might be, but do you remember of knocking at the door? A dead man even would have awakened at the force with which I knocked at the door None of you woke up at that knocking, then when I again knocked

at the door, you, from within the room in the upper storey, opened the door, and said, 'who are you?' I said, 'come down and see who I am')

It is a fact that I recognised his voice, and got down

The plaintiff continued his narration 'তুইত লামলি। তুই কলি এই রাত্রিতে কিষেব লাইগা আইচস্। দরকাব না থাকলে আইছি। তুই কইলি কি দবকার? আমি কইলাম টাকার দরকার, তোব বাবাকে একটু খবর দে। তুইত বাবাবে খবর দিলি, তোব বাবা আসল জিজ্ঞাসা করল, এত রাত্রে আপনি টাকার লেগে আসছেন—এব অর্থ কি? আমি বললাম আমার ভয়ঙ্কর দরকার, বিশেষ দবকাব না হইলে হইব না, আমাৰ হাজার টাকা দেন। তোর বাবা বলল আমি হাজার টাকা দিতে পারব না, আমাব কাছে ৯০০ টাকা আছে। আমি জোব আপনারে ৫০০ পর্যন্ত দিতে পাবি, আমি সেই টাকা নিয়ে চলা এলাম।'

(You came down and said, 'why have you come at this late hour of night?' I said, 'Have I come without any necessity?' You asked, 'what is the necessity?' I said, 'I require money, send information to your father' You sent information to your father Your father came and asked, 'How is it that you have come for money at this late hour of night?' I said, 'I am in great and special need, it won't do without it Give me a thousand rupees' Your father said, 'I will not be able to give you one thousand rupees I have got Rs 900/- with me I can at most give you Rs 500/-' I came away with that money)

This is what he said It was a correct account of what had actually happened This took place at the first and last visit to our house

I never thought of this incident until after the plaintiff mentioned it That brought it back to my mind I can swear that such an incident did take place

He came to my father for only (?) money as he used to advance money to Bara Kumar as well as to Mejo Kumar (second Kumar) from time to time

I had recognised the plaintiff before I questioned the plaintiff, but I put the question to make assurance doubly sure

After the plaintiff narrated the incident as above, I clasped him—I embraced him, and said how glad I was to find him alive I told him I had come with a prejudiced mind, and was going fully convinced that he was the real Kumar and an old friend "

It seems to me from this description that the witness was doubtful about the identity until plaintiff related the incident of the borrowing at midnight I cannot believe that the most cautious of individuals who clearly recognised an old friend, would say when that friend offered proof of identity, "some one might have told you I was coming "

The evidence of the witness is evidence of a man who was unable to recognise plaintiff merely from his appearance and as plaintiff had by that time been surrounded by members of the Bhowal family for 4 years, he might easily have heard of the midnight visit to Nag Senior The witness was, I think, honest in his opinion but he was one who could not help exaggerating when he described anything He wished to suggest that Ramendra Narayan Roy and also plaintiff were much fairer in complexion than the average Englishman he would call their complexion 'Norwegian'

The plaintiff was before us on many occasions he is undoubtedly fair for a Bengalee, but there are many other Bengalees as fair, and to describe him as fairer than the average Englishman was a ridiculous exaggeration

In the circumstances, though I regard N K Nag as honest, I think it probable that his description of the meeting was highly coloured and inaccurate, and I regard his acceptance of plaintiff as no proof of recognition.

RAMESH CHANDRA CHAUDHURI

Ramesh Chandra Chaudhuri went on 3 or 4 occasions to see the plaintiff on Buckland Bund and thought that he might be Ramendra Narayan Roy. His evidence regarding recognition was in these words

"When I first heard of this I heard he was on the riverside. I went to the riverside to see him. I found him at Rup Babu's *ghat*. Rup Babu is dead. His grandson is now living—one grandson is living. The house to which the *ghat* adjoins is called the house of Rup Babu and Roghu Babu, brothers. I saw the sadhu there. His body was bare, but smeared thickly with ashes from head to foot, not the hair except its front. His hair was long and he had a beard, his hair fell below his waist. I was there for 20 minutes. I saw him, and looking to the cut of his face and formation of his body I thought that he might be the second Kumar of Bhowal. I went again to see him 3 or 4 days. I told what I thought to people at my house at Dacca.

I know Bhulu Babu of Kasimpur. Some 15 days after I met him and Budhu. They were going in a carriage past my house. I called them. The coachman stopped. They said they were going to Kasimpur House at Lakhbazar, Dacca. I got into the *gharry* to go with them. Kasimpur House is Bhulu Babu's *basha* at Dacca. He is nephew of Saroda Babu of Kasimpur and is himself zemindar of Kasimpur. Bhulu Babu's name is Atul Prasad.

At Kasimpur House Bhulu Babu and I and Budhu had conversation. I told them what they (*sic*) had seen. I can't say whether they had seen the plaintiff too. As I said what I said, Budhu and Bhulu Babu said 'Let us go and see him too.'

Next day Budhu, Bhulu, Duranto and I went together to see the plaintiff. We all saw the plaintiff there. Bhulu and Budhu expressed their opinion about him. Budhu said 'He looks like Mejo Mama from his face and figure.'

Q—What did Bhulu Babu say? (Objected to) (Allowed under section 155 in anticipation, as his deposition has been taken on commission and might be tendered, and it may so happen that I shall decide to take it)

A—He said 'Looking to his face and figure, he looks like the second Kumar.'

After that day I went to see the sadhu twice or thrice. I spoke to him. He gave no reply. Subsequently I met Bhulu Babu again. I asked him what he thought of the man. He said he seemed like the Mejo Kumar and that he would soon take him to Kasimpur. I do not know if he did take him to Kasimpur.

Subsequently I heard something, and went to Dacca Railway station to get to Jaidebpur, but it was so crowded that I could not go.

Later, I saw him at the Armanitola *basha* at Dacca. I saw him in the middle room in the ground floor. I went into that room. I went alone.

In his room were some men whom I did not know I recognised him I took a minute to recognise him I stood there and he was speaking to others As his eyes turned to me, he looked at me for a moment and said, 'চৌধুরি ব এইখানে' (Chaudhuri, sit down here)

Then I made my *namashkar* (salutation) to him and sat down on a chair "

His evidence shows that his recognition was of a very uncertain kind

SURENDRA CHANDRA BHATTACHARJEE

Surendra Chandra Bhattacharjee was a retired police officer He saw Ramendra Narayan Roy many times but never had speech with him He gave evidence most damaging to the plaintiff's case when he said that plaintiff informed him that 'Sundar Das Naga' was tattooed on his arm Counsel for plaintiff was allowed to put leading questions to the witness in re-examination, and persuaded him to resile from the statement This witness claimed to have recognised the plaintiff as soon as he saw him

RAJENDRA KUMAR ROY CHOUDHURI

Rajendra Kumar Roy Choudhuri was apparently intimate with Ramendra Narayan Roy in his youth He first met plaintiff at the house of Jyotirmoyee Devi, 4 or 5 days after the monster meeting at Jaidebpur The witness says "I took a minute or two to look at him—"to mark" him, and recognised him "

BRAJA GOPAL BASAK

Braja Gopal Basak took 1 or 2 minutes to recognise plaintiff, after hearing that Ramendra Narayan Roy had come back

Though the witness may have seen Ramendra many times, he was not well acquainted with him Apart from seeing the Kumar when he was driving through the streets, witness seems to have met him on a few occasions only in connection with the arrangements of the Janmasthami procession in Dacca

ABUL KASEM

Abul Kasem claimed to have seen Ramendra frequently when the latter used to come to witness's grog shop to take away his uncle whenever the uncle became drunk and incapable there He said that when he saw the plaintiff in 1921 he recognised him, though he took some time to do so

ANANDA CHANDRA GANGULI

Ananda Chandra Ganguli met Ramendra Narayan Roy on several occasions about the year 1904 He saw the plaintiff for the first time in November, 1921, when the plaintiff had shaved his beard It took the

witness 2 or 3 minutes to recognise plaintiff, though he had already heard that he was Ramendra Narayan Roy

JOGESH CHANDRA ROY

Jogesh Chandra Roy had seen the three Kumars during his school days. He first saw the plaintiff on the day of the monster meeting at Jaidebpur, and after staring at him for 3 or 4 minutes decided that he was indeed Ramendra Narayan Roy. The witness asserted that when he saw plaintiff he had not heard that Jyotirmoyee Devi and her son had already accepted him—an assertion I find difficult to believe

HIRANMAY BISWAS

Hiranmay Biswas gave an interesting story of his first encounter with plaintiff in 1921. "In Falgoun or Cartra, 1327, I saw a sadhu at the Tara Bai circus on Armanitola Maidan. He was brought in by Babu Sarat Chandra Chakravarty, pleader of this court, since deceased. Sarat Babu made him sit in a chair in the front row. I was annoyed to find such a man in such an attire—not properly clothed—as there were some ladies. I looked at him. His manner struck me as peculiar as if he was a man in disguise. It was evening. He arrived about 8-30 P.M. after the performance had gone on for some time. After he left the circus, and as the combined effect of his manner of sitting, his gait and other things, the thought occurred to me that he might be the second Kumar of Bhowal. His body was covered with ashes that day 'all throughout'."

"After I saw the sadhu at Tara Bai Circus I heard of his disclosure of identity at Jaidebpur. I read the Collector's declaration that he was an impostor. After that I saw him many times at Dacca. When I saw him subsequently at Dacca, I recognised him to be the second Kumar of Bhowal. I often saw him standing at the doorway of his house at Armanitola near the church, and also in the house of Babu Sudhansu Kumar Pal. This last house is in Kali Prasanna Ghosh Street and is to the north-east of Armanitola maidan. The second Kumar used to reside at this Pal's house for some time. I saw him last at this house. Next to the house, on the east was the house of Mr Harney who has transferred it to somebody. Mr Harney's house is still there.

I recognised the plaintiff or the second Kumar on the first occasion. I saw him after his return from Jaidebpur. I might have taken a minute or two to recognise him. I did not go and call upon him after I recognised him. I did not for two reasons. First, I was a zemindar and I remembered the poster, and I was known to the local authorities, and if I mixed with the plaintiff I might incur their displeasure. My second reason was that by nature I am 'exclusive' and did not like to visit these big people, and also I was averse to give evidence thereafter in connection with that matter. Therefore, I shrank from it. I am giving evidence now as I have got a summons, and as a lawyer bound to obey the court's order. I am not sure whether I got my summons before I made a statement to plaintiff's lawyer. The fear of local authorities does not persist."

The description of the incident at the circus is most unconvincing, as also are his reasons for not calling on plaintiff after recognising him, considering that the witness regarded himself as under great obligations to the

Bhowal family When he saw the plaintiff, to recognise him, the plaintiff had shaved his beard, yet the witness took a minute or two to recognise him

KALI MOHAN SEN

Kali Mohan Sen was a retired Deputy Magistrate He saw plaintiff on a steamer in 1932 and described the meeting in these words

"I was at Patuakhali when I heard the second Kumar had come back I happened to meet him by chance on board the Naranganj steamer He came on board, and, as I saw his face, appeared to be Kumar to me, and so I went to him and looked closely at him He was very fat like a millionaire, but in those days he was a 'robust' young man I went to see him when I 'espied' him I was then in the middle of a conversation with an Additional District Judge of Dacca As I caught sight of him, I went up to him and closely looked at him I recognised him He looked like the second Kumar, and I enquired of Anukul Babu, pleader, whether he was not the second Kumar of Bhowal He said, yes There was also a taluqdar who entertained us with songs This inquiry aforesaid was when I first saw him from a distance I did recognise him on board the steamer as the second Kumar of Bhowal I passed the whole day with him in his cabin, and the taluqdar sang songs and the Additional Judge, a friend of mine, came in That judge was one Mr Mukherjee, a Calcutta man, that is not a Dacca man whose full name I forget and who lived at Waru near the Railway line The Kumar talked to me whole day in Bengali, and the judge and I joined in the conversation and enjoyed ourselves and we had nothing else to do "

This witness described an alleged conversation with Dr Nibaran Sen in Darjeeling, thus

"When I spoke to Dr Nibaran Sen I started by cutting joke with him, 'you doctors killed Mejo Kumar—it was such a short illness and allopathic doctors were good for nothing'

Q—Did Dr Sen tell you anything about how the second Kumar died?

A—Yes I asked him his medical opinion

Q—What did he say? (Objected to Allowed)

A—He said 'I prescribed things Civil Surgeon prescribed things Nothing took effect, and I suspected it was a case of arsenic poisoning'

I was horrified and asked, being a Magistrate, why he did not inform the police He said that Bara Kumar and Chhoto Kumar were not there, and if he informed the police, Satya Babu and Ashu Doctor, a *Baidya*, would be harassed by the police (Objected to)"

I cannot believe that any such conversation ever took place

GOBINDA CHANDRA ROY

Gobinda Chandra Roy received a letter from the husband of Indumoyee Devi after the plaintiff's arrival, which letter unfortunately has not been produced Whether the witness recognised the plaintiff from his appearance or from his conversation is not made clear

NARENDRANATH MUKHERJEE

Narendranath Mukherjee's evidence has already been referred to above.

VALUE OF THE EVIDENCE OF RECOGNITION BY INTIMATE ACQUAINTANCES

This is the lower court's complete list of independent gentlemen whose acquaintance with Ramendra Narayan was so intimate that, in the opinion of the learned trial judge, they could not make a mistake

Their evidence shows that the recognition of the plaintiff was uncertain, hesitating and doubtful. Some of them saw him on the Buckland Bund, after a report had already been spread to the effect that he was Ramendra Narayan Roy. Though they went and inspected him carefully, 4, 8, 10 or a dozen times, they were unable to decide whether he was indeed Ramendra. Those who saw him for the first time after the declaration of the fourth of May, did not recognise him instantaneously. Apparently, not a single one of his old friends and boon companions recognised him at sight and went up to him, slapped him on the back and exclaimed, "Hallo, Ramendra, where have you been all this time, etc ?", or the Bengali equivalent for this. Even though they had learned (as they must have done) that he had been recognised by Jyotirmoyee Devi and others, and bore the same marks as the late Ramendra, they could not recognise him at once. They had to look at him again and again and again, and persuade themselves that he was indeed Ramendra. This sort of recognition carries little weight. The Tichborne case in England showed that honest witnesses can be hopelessly wrong in identifying an old friend after the lapse of many years. In the present case, the evidence of recognition is much more halting than in the Tichborne case.

OLD OFFICERS OF BHOWAL ESTATE

The learned trial judge has given a list of personal servants and old officers of the estate who have deposed in favour of the plaintiff. Some of these are obviously unreliable inasmuch as they deposed to fictions, such as the talk of *kushaputtahka*, and asserted that Jogendra Nath Banerjee was President at the monster meeting in Jaidebpur—see Protap Chandra De and Nanda Kissors Tewari.

The value of the recognition by old officers can be judged from a few samples

Bipin Bihari Chakravarty described his first meeting with plaintiff thus

"At Budhu Babu's house when I first saw the plaintiff, he had a beard about 8 inches long, body covered with ashes. I saw him, looked closely at him for *about an hour and a half* and then recognised him.

I had heard in the train going to Jaidebpur that Mejo Kumar had come. When I was looking at the Kumar at Budhu's house, Prosanna Banerjee was with me. Nobody of Budhu's family spoke. I examined with my eyes the whole body, head to foot, and then recognised. I asked him nothing."

Surendra Mohan Adhikari gave the following evidence

"After the *sradh* I saw the plaintiff first in Baisak, 1328. I saw him at the house of Jyotirmoyee Devi at Jaidebpur. He was then in *length* (long

cloth), his hair matted, there was a beard, body bare, except for 'a big *gamchha* covering his chest I closely looked at him and his features *for about half an hour*, and then I recognised him "

The learned trial judge also set out a list of witnesses "whose credit is unquestionable but whose recollection of the second Kumar may be questioned" It seems to me that their evidence can carry no weight

DEFENCE EVIDENCE AS TO RECOGNITION

With regard to the defence evidence, the statements of present employees of the estate must be discarded in view of the conduct of Jogendra Nath Banerjee and others in the matter of procuring evidence

Of the others, the scrupulously honest ones, like J T Rankin, said that they could see no resemblance, but they were not prepared to say that any one who pretended to see a resemblance was making a false pretence. Witnesses like K C De and J N Gupta saw very little of Ramendra Narayan Roy, and their failure to recognise plaintiff has very little significance. H C F Meyer probably knew Ramendra well, but seems to have had very little opportunity of seeing the plaintiff, and to have jumped to the conclusion that he was an impostor without examining him carefully. The main interest in his evidence lies in the treatment of it by the learned trial judge. When considering the evidence that even while on Buckland Bund, plaintiff was suspected of being Ramendra Narayan, the learned trial judge accepted as true Meyer's statement that he had gone to see him there, but in discussing Meyer's credibility, the learned judge holds that this statement was false.

SARADA PRASANNA GHOSH

The most convincing evidence on defendants' side, in the matter of recognition, is that of Sarada Prasanna Ghosh. The father of this gentleman was manager of the Bhowal estate for years, and the witness and Ramendra Narayan Roy grew up together. The witness' description of the meeting was as follows:

"Hearing the story that the second Kumar was alive and had returned I had a great curiosity, and on hearing that the plaintiff would come to the house of Ananda Babu, myself and my elder brother went there. We took our seat on a big bench in the verandah of the ground floor of Ananda Babu's house. The *sadhu* (the plaintiff) had many people with him. They came there and the plaintiff was sitting very close to us. Then he was asked whether he could recognise us or not. Thereupon he said, 'I have no idea.' I have a vivid recollection of this much. He did not say any such thing or show any such deportment from which it might appear that he had recognised us. We returned greatly disappointed.

Q—You have said that you went to see the Kumar, hearing the story of his (the Kumar's) coming. Does it thereby mean that you went to see whether he was the Kumar? What impression did you form—is he the Kumar or not?

A—I came back with this impression that he was an impostor. And later, the witness said that he had not noticed any similarity between the features of the second Kumar and those of the plaintiff.

It was contended in the lower court that Kali Prasanna Ghose, father of this witness, had been dismissed by Rani Bilasmani Devi in the year 1907, had been deprived of his pension and had been sued for accounts, and it was, therefore, suggested that the witness had probably given false evidence out of enmity. This account suit was withdrawn by Rani Bilasmani Devi at the request of her eldest son.

In this court Mr Chatterjee for the plaintiff withdrew any suggestion that Sarada Prasanna Ghosh had given false evidence on account of this enmity.

The learned trial judge was inclined to discredit the witness, because the latter was uncertain as to the date of his interview with the plaintiff, and the learned judge held that in the circumstances the interview might have taken place before the declaration of the 4th of May. In view of the fact that the interview was in the house of the pleader Ananda Roy, it is obvious that the interview must have taken place after that declaration.

BIBHABATI DEVI

The learned counsel for the plaintiff pointed to the evidence of Bibhabati Devi and Sukumari Devi, and argued that these two witnesses must, in fact, have recognised the plaintiff.

Bibhabati Devi deposed

"It is true that I saw the plaintiff several times before I filed my written statement. I saw him first as he* and Budhu drove past my house in Lansdowne Road slowly, and pulled up a little beyond the gate on the road. Then Budhu pointed with his finger towards me, and I saw the plaintiff looking at me—I was on the *gari-verandah* (portico) with the children, and I judged that he was the man from his long hair.

* Witness used the word 'Kumar', but she was referring to the plaintiff.

P Basu, S J

I saw him on the second occasion in Lansdowne Road. Plaintiff was then going with Budhu on a phaeton. I was on the roof of the *gari-verandah*. I don't remember if the children were with me that day. This occasion was a few days after the first (*Volunteers*). He would then pass from time to time, but I saw him 3 or 4 times in Lansdowne Road.

On the second occasion he had long hair. I don't remember if Budhu pointed me out on this occasion also."

And again

"The second occasion on which I saw the plaintiff in phaeton with Budhu in Lansdowne (Road) was within a week from the first occasion. On the first occasion the phaeton stood beyond the gate near the hydrant—it stood for about 5 minutes. On the second occasion also the phaeton stopped for about the same time and about the same spot.

The plaintiff passed thus several times, but I saw him 3 or 4 times in Lansdowne Road. I can't recall if these include the first two occasions."

Mr Chatterjee argued that Bibhabati Devi would not have stood gazing at the plaintiff, if she had not recognised him to be her husband. This

argument makes no allowance for natural curiosity. Any woman would naturally be interested to see the man who was claiming falsely to be her husband.

SUKUMARI DEVI

Sukumari Devi is another lady who allowed her curiosity to induce her to gaze long and earnestly at the plaintiff. I am unable to interpret this curiosity as recognition. On the other hand, this witness admitted a certain resemblance between plaintiff and Ramendra Narayan Roy, though she thought that the nose and eyes were different.

The learned counsel for plaintiff has argued that all those defence witnesses who said that there was no resemblance, must have given deliberately false evidence, because witnesses of undoubted honesty saw a striking resemblance. This argument is not convincing. It is a matter of every day experience that one person often sees a striking resemblance between two others, whereas another can see no resemblance at all.

The defence evidence regarding recognition is certainly not so strong as to prove conclusively that plaintiff is not Ramendra Narayan Roy, but as the burden of proof is on the plaintiff, this is immaterial, if the plaintiff's evidence failed to prove affirmatively the fact of identity. In my opinion, the evidence on record regarding recognition is insufficient to establish plaintiff's identity as Ramendra Narayan Roy.

EVIDENCE OF PHYSICAL IDENTITY INITIAL DIFFICULTY

We have next to consider the evidence of physical identity, as established by comparison of physical features.

In attempting to decide whether or not the plaintiff is physically identical with Ramendra Narayan Roy, or rather so nearly identical that the changes may be ascribed to the lapse of time since Ramendra Narayan Roy disappeared, we are faced with the initial difficulty of determining exactly what Ramendra's features were. It is true that hundreds of witnesses have deposed from memory regarding his eyes, nose, ears, complexion, colour of hair, etc., and it is equally true that many of these witnesses were firmly convinced that they were speaking from memory of Ramendra Narayan Roy as they knew him in 1909 and earlier. But the fact remains that for 12 years or more after 1909 they lost sight of him, and their memories must have become dim and vague. Then they saw the plaintiff. An examination of the evidence of identification has shown, many of them accepted him without actual recognition, either on the evidence of his memory of persons and past events, or as a result of their confidence in Jyotirmoyee Devi, or even as a result of mass suggestion. These witnesses were many of them quite honest in their belief that plaintiff is Ramendra Narayan Roy. They had been seeing him continuously for 12 or 15 years before they gave evidence, and naturally the image of plaintiff as he is, had supplanted in their minds the image of Ramendra Narayan Roy as he was. In other words, they had been refreshing their memory of Ramendra Narayan Roy for many years by looking at the plaintiff. Inevitably their description of Ramendra was affected by their inspection of plaintiff, and they gave the features of the plaintiff as those of Ramendra Narayan Roy. The average man does not carry in

his mind a clear picture of the features of intimate friends, and still less so, of casual acquaintances, and can rarely describe the features with any accuracy unless they are so unusual as to compel notice. It may be argued that though the mental image is apparently indistinct, and the ability to describe features accurately is wanting, still a man would at once note any differences, even if unable to describe them. This is true to some extent, but the longer the time which elapses between the disappearance and the reappearance, the less noticeable will any difference seem.

EFFECT OF LAPSE OF TIME

Moreover, even if at first the observer is conscious of some difference, that consciousness will disappear with the lapse of time. This has been clearly demonstrated in the present case. There are on record a number of photographs of the plaintiff, and a number of photographs of Ramendra Narayan Roy taken before he went to Darjeeling. At the first glance one is aware of an apparent difference in the shape of the nose. The plaintiff's nose seems to be much broader at the bridge, and the nostrils seem to be much wider. The evidence of Drs Denham White, Thomas and K K Chatterjee shows that there is a bony growth $7/16$ th of an inch in size on the right side of the nasal bone. The photographs suggest that there was no such growth on the nose of Ramendra Narayan Roy before he went to Darjeeling. It is clear also that this difference in the appearance of the nose was considered to be very striking when plaintiff first appeared in Jaidebpur, and explanations were freely offered to account for the change in shape. Thus in the pamphlet—"*Fakir Beshe Praner Raja*", it is stated that the nose has become thick by the religious practice of *kumbhak* (retention of breath by closing the nostrils)." Witnesses noticed the change in shape, and when they asked plaintiff about it, he told them that the change was due to the practice of *pranayam*.

There can be no doubt, therefore, that the plaintiff's nose is different in shape from that of Ramendra Narayan Roy in 1909, and that the difference was very noticeable when plaintiff first made his claim in 1921. Yet witness after witness for the plaintiff deposed that there was no difference in shape, e.g., Mahendra Das Gupta, Haran Sannyasi, Manmatha Ghosal, and Monmohan Roy. Even Jyotirmoyee Devi could not see any difference in the shape when she was deposing. From this it seems clear that the picture of the plaintiff had completely ousted the picture of Ramendra Narayan Roy from the minds of these witnesses.

On the other hand, I suspect that people who saw the plaintiff, with their minds already made up that he was an impostor, immediately imagined differences in detail of which they had no clear recollection. Hence in attempting to compare the features of the plaintiff with those of Ramendra Narayan Roy, it is useless to consider features of the latter, of which we have no description dating from before the arrival of the plaintiff, or regarding which there is disagreement between the parties.

COMPARISON OF BODILY FEATURES

The parties are agreed that Ramendra Narayan Roy was a man of fair complexion and fair hair. The plaintiff too has fair hair and fair complexion. Witnesses on the one side said that the complexion and colour of hair were

the same, those on the other side said that they were different. Few people have any memory for exact shades, and it is impossible to place any reliance on the evidence of difference or of identity in the shade of colouring.

The defendants admitted that Ramendra Narayan Roy, like his sister Jyotirmoyee Devi and other members of the family, had thick scored skin on the ankles. The plaintiff has skin which presents a similar appearance.

It is not possible to say that the cause of the rough skin of Ramendra Narayan's ankle was the same as the cause of the rough skin of plaintiff's ankle, because no cause for the former was ascertained. It is interesting to note that Dr K K Chatterjee was inclined to regard the rough skin on plaintiff's ankles as evidence of his self-acquired syphilis—in spite of the fact that all the evidence was to the effect that Ramendra Narayan Roy had inherited this condition.

Apart from these admissions, we have some photographs of Ramendra Narayan Roy, we have the report of the medical officer who examined him when he made a proposal for life insurance, and we have an affidavit by Kali Prasanna Vidyasagar sworn on the 6th March, 1910, in which there is a description of Ramendra. These will have to be considered when we attempt to compare the features.

It is convenient to take the different features in the same order as that in which they are considered in the lower court's judgment.

Age

Ramendra Narayan Roy was born in July, 1884, and would now be 55 years of age. The plaintiff is a man of middle age and may easily be 55 years old. There is no method of determining his age exactly, and all that can be said is that there is nothing in his appearance to disprove the allegation that he is 55 years old.

Height

The plaintiff was measured in the lower court and found to be 5 feet 6 inches in height in his bare feet.

In the confidential report of Dr Arnold Caddy on the proposal for insurance, the height of Ramendra Narayan Roy in April, 1905, was given as "Without shoes, height 5 feet 5 inches." Ramendra Narayan was then less than 21 years of age. It seems probable that he grew in height after April, 1905, and he might easily have grown exactly one inch more before his growth stopped. But, again, there is no means of deciding whether he did grow exactly one inch more, he might as easily have grown only $\frac{1}{2}$ an inch more. On the other hand, he might have grown $1\frac{1}{2}$ or 2 inches. All that can be said is that there is nothing in the height of the plaintiff to disprove his claim. The learned trial judge seemed to be under the impression that the exact height of Ramendra Narayan Roy at a date later than April, 1905 could have been ascertained from the tailors who made his clothes, and observed, "Tailors making clothes to order generally note the full height." The learned trial judge's experience must have been different from mine, and I see no reason for thinking that any accurate information as to Ramendra Narayan Roy's height in 1909 exists.

Figure

A man's figure changes with his habits, so that no comparison in this respect is possible.

Complexion and colour of hair, moustache and eyebrows

The learned trial judge has examined the evidence on these points with great care, but as I have pointed out above, I do not consider that any oral evidence unsupported by documentary evidence or evidence of a period before 1921 has any value. All that can be said is that Ramendra Narayan Roy had a fair complexion, fair hair, moustache and eyebrows and that plaintiff too is fair in these respects. As it is impossible to place the Ramendra of 1909 alongside the plaintiff of to-day, it is not possible to make any proper comparison of the fairness.

Colour of the eyes

On this point there has been a mass of oral evidence, but for the reasons given above I attach very little value to it.

Everybody is agreed that Ramendra Narayan Roy's eyes were '*kata*', and it is now conceded that in Bengal all eyes, of whatever shade, which are lighter than the ordinary Bengalee eyes, are called '*kata*'. The term includes light brown, yellow, green, grey and blue eyes, and any mixture of these colours. We have been assured that in Bengal, ordinarily people do not refer to the particular colour of the eye, they refer to the eye as of ordinary colour, or as *kata*. If necessary, of course, particular colour may be mentioned, but the necessity is not ordinarily felt. Consequently, when the witnesses were required to describe Ramendra Narayan Roy's eyes, many of them merely said that they were *kata*. When asked to be more definite, they offered various descriptions, such as 'bluish', 'a shade of blue', etc.—if they were defence witnesses. The plaintiff has light brown eyes. No Englishman would describe them as any other colour than brown. In the medical report of Dr Arnold Caddy to which reference has already been made, occurs the description "eyes grey". In the affidavit of Kali Prasanna Vidyasagar of March, 1910, the description is, "eyes and hair rather brownish".

The learned trial judge has placed greater reliance on the affidavit of Kali Prasanna Vidyasagar than on the medical report, and has explained away the entry in the medical report in the following manner —

Girish Chandra Sen was the agent who persuaded Ramendra Narayan Roy to take out the insurance policy, and he, Girish Chandra Sen, was present at the medical examination by Dr Arnold Caddy. The procedure adopted was that Girish Chandra Sen examined the applicant and announced the result, which Dr Arnold Caddy noted. The word '*kata*' is ordinarily translated into English as 'grey'. Girish Chandra Sen noticed that Ramendra Narayan Roy's eyes were '*kata*', and naturally in speaking English, he said that they were 'grey'. Hence Dr Arnold Caddy came to note 'eyes grey' in the report.

Unfortunately, this ingenious explanation is obtained by a misreading of the evidence of Girish Chandra Sen. That evidence reads

"Then Dr Caddy in my presence examined his heart and lungs, took his weight and chest measurements, forced inspiration and forced expiration, and examined a sample of the urine. Dr Caddy took his height. After the examination, Dr Caddy set down and began to fill in the medical portions of the form. Then he began to put to the second Kumar the questions in the form regarding private history. He put these questions in English. I translated the questions into Bengali, and asked the second Kumar to answer. He answered in Bengali, and I translated his answer into English for the

doctor After all this the second Kumar was made to sign under his own answers

I do not remember to have taken any other man with the second Kumar's complexion, and eyes and hair, to the insurance doctor

After the second Kumar signed the statement aforesaid, the doctor asked me to look for any identification mark I told the doctor that white complexion, grey eyes, and brown hair were enough identifying mark, as these do not occur in a Bengalee The doctor then bowed the Kumar out, and said to me 'I have never seen a white man among the Bengalees' (Last objected to)"

Girish Chandra Sen did not say that it was he who described the eyes as 'grey' nor is there anything in his evidence to suggest that it was he and not Dr Arnold Caddy who made the observations In the absence of definite evidence, it is difficult to believe that a doctor would make an entry regarding the colour of the examinee's eyes without looking at them, if the examinee was in the very presence of the doctor Moreover, the fact that Girish Chandra Sen thought that 'grey' eyes was an identifying mark in a Bengalee, suggests that he did not refer to *kata* eyes in general, which are not so very uncommon

If the two reports were held to be necessarily in conflict each with the other, I should prefer to accept the report of Dr Arnold Caddy The opinion of an Englishman, who is accustomed to thinking of the different shades of colour of the eye, noted down at the time he observed the colour, is more reliable than the opinion of a Bengalee gentleman who was not accustomed to noting the different shades of colour, and who did not make a note of his observation until a year or so after he had last seen the eyes he was describing But as a matter of fact the two reports do not necessarily conflict

We have the admitted fact that some of the children of Raja Rajendra Narayan Roy had blue eyes Therefore, there was at least a probability that Ramendra Narayan Roy had eyes of a colour containing a bluish tinge The eyes of his younger brother were definitely blue, as also were the eyes of Jyotirmoyee Devi's son, according to the evidence of Jyotirmoyee Devi herself.

Jyotirmoyee Devi appeared before us at the request of the learned counsel for the plaintiff that we should compare her eyes and her ankles with those of plaintiff Her eyes had a brown light in them, with a bluish or greenish tinge—the sort of eyes which are frequently described as hazel In some lights the brown colour of her eyes is more noticeable, in other lights the green or blue shade predominates I can well imagine anybody describing her eyes as "rather brownish" or as "hazel" or as "grey" It seems to me almost certain that the eyes of Ramendra Narayan Roy were rather like those of his sister Jyotirmoyee Devi, and had a definite blue or green or grey shade in them On the other hand, the plaintiff's eyes are brown, and I cannot imagine any Englishman describing them as grey

I am satisfied, therefore, that the colour of Ramendra Narayan Roy's eyes was not the same as the colour of the plaintiff's eyes

Features from photographs

A large number of photographs both of Ramendra Narayan Roy and of the plaintiff have been proved in this case, and four artists have been examined as expert witnesses, two to prove identity from photographs and two to prove difference

I have not been able, by mere examination of the photographs, to find such similarity as to convince myself that they are all photographs of the same person

The learned trial judge has taken the opinion of the artists as of more importance than the opinion of ordinary intelligent persons, apparently on the assumption that the artistic eye sees deeper than the eye of ordinary human beings. How the ordinary layman is to choose between the conflicting opinions of the different artists is not easily understood. But I may say at once that I cannot regard these artists as experts in identification from photographs. In the present case, the artist witnesses have not in fact relied on the supposed superior virtues of their artistic eyes, they have attempted the scientific method of detailed examination of the photographs and have pointed out details in which the photographs are said to agree and others in which they are said to differ.

The first of the artist witnesses to be examined, and the one on whom the learned trial judge placed the most reliance, was *Jamm Prakash Ganguli*. This gentleman admitted that he could not at first recognise the two photographs submitted to him, as photographs of the same person, that he had to study them with magnifying glass for about 45 minutes before being able to find the similarity. He then stated that he was satisfied of the identity from certain peculiar marks which he found in both photographs. Whenever a difference between the photographs was pointed out to the witness, he explained it as due to the difference of light and shade. Thus when questioned

"Q—I put it to you that the bridge of the nose in photo XLVIII is much broader than of the nose in photo XLIX?"

he answered, "Looks broader owing to the difference of the light and shade." This single answer shows how valueless these artistic opinions are, unless they can be verified by the layman. The shape of the nose is now admitted to be different, and the apparent difference is not due to differences of light and shade.

The learned trial judge has subjected the evidence of the four artists to a careful examination and has decided in favour of identity owing to the supposed identity of four separate marks.

Before investigating the question of identity, it should be borne in mind that all the photographs of Ramendra Narayan Roy are copies of an original. They have been touched up in the process. There is no evidence that they are exact copies. It is true that they have been put to defence witnesses and admitted to be photographs of Ramendra, but this admission does not mean that they are correct down to microscopic details. It merely means that the photographs are sufficiently accurate to recall Ramendra Narayan Roy to the mind of the witness.

The artists have found an apparent twist to the right in the lower lip both of Ramendra and of the plaintiff. I have examined the photographs carefully and cannot find that there is any such twist. An apparently greater fulness of the right lower lip, when the left side of the face is in the light and the right side in darkness, is probably due to the shadow under the right side of the lip. Even if the lip photographs showed such an apparent twist, it would not be possible to say to what extent this was due to a momentary jutting out of the lip or to the art of the toucher up.

It must further be remembered that no evidence was given regarding the actual taking of plaintiff's photographs. Plaintiff was obviously posed to make him look as much like Ramendra as possible, and may easily have been persuaded to let his lip jut out. We had ocular demonstration, when examining the plaintiff's fingers, of his attempts to strain evidence in his own favour.

A second feature said to be in plaintiff's favour, is the size of the fingers of the left hand. In the photograph of Kali Narayan Roy, grandfather of Ramendra Narayan Roy, the index finger and the middle finger of the left hand seem to be of the same size. But inasmuch as the middle finger is obviously more bent than the index finger, this apparent equality may hide a great inequality. There is no photograph of Ramendra Narayan Roy from which it is possible to say with any certainty that the index finger and middle finger of the left hand are more nearly equal in length than is usual. When plaintiff appeared before us, no pretence was made that the index finger and middle finger of his left hand were equal in length, all that was urged was that the difference between the lengths of these two fingers was less than the difference between the lengths of the corresponding fingers of the right hand. This seems to be true, though the persistent efforts of the plaintiff to curve his middle finger and stretch out his index finger made the difference seem greater than it really was.

In my opinion, we have no reliable data to show that this peculiarity of the plaintiff existed in Ramendra Narayan Roy also.

Two points of light

The learned counsel for plaintiff frankly abandoned these points and admitted that he could not show them to us. I have examined the photographs with the aid of a magnifying glass and cannot find any points in the eyes which can be satisfactorily identified as marks common to plaintiff and Ramendra Narayan Roy.

The ear

In my opinion the artists have given rein to their imagination more freely in finding points of difference or of agreement in the ears, than in other details, except possibly the twisted lips.

Plaintiff admittedly has ears of a most unusual shape. The lobes are very large and in appearance not continuous with the rest of the ear, they have the appearance of being super-imposed on the rest of the ear.

There is no oral evidence, of any value, to show that Ramendra Narayan Roy had ears of a peculiar shape. The lobes found in plaintiff are not to be found in Jyotirmoyee Devi or in the photograph of her father Rajendra Narayan Roy. There is no photograph of Ramendra Narayan Roy in profile which gives a clear view of his ear. Arguments have been addressed to us to the effect that the shape of the upper part of the ear of plaintiff is the same as that of Ramendra in the photographs. In some photographs a likeness can be traced; in others it is completely absent.

I do not consider that any of the photographs give us a clear untouched picture of Ramendra's ears, and, therefore, it is impossible to say whether they were like plaintiff's ears or not.

In my opinion, the general impression from the photographs is of difference, but I am not prepared to say that the difference is necessarily

greater than might be expected owing to the lapse of time. There is nothing in the photographs to establish identity, and though I cannot see any likeness between the photographs of plaintiff and those of Ramendra Narayan Roy, I am not prepared to hold that the photographs disprove plaintiff's claim.

One feature that is noticeable in the photographs is the nose. The difference between the nose of plaintiff and the nose of Ramendra Narayan Roy is obvious, *pace* the evidence of Jamini Prokash Ganguli. This difference has already been discussed, and it has been shown that there is an admitted difference. Plaintiff has a bony growth 7/16th in size which apparently Ramendra Narayan Roy did not have.

It has been argued before us that this difference does not prove that the persons are different. We are asked to believe that the difference in shape is due to changes which have occurred since 1909. It is impossible to say definitely that the obvious difference in shape is not due to changes occurring since 1909, but if the bony growth has appeared since then, we are entitled to expect that plaintiff would inform us of the fact. So far from doing so, plaintiff insisted that the shape of his nose was what it always had been, he denied any change, and was supported in his denial by Jyotirmoyee Devi. The only witness for plaintiff who asserted that he heard any explanation of the change in shape other than due to the practice of *kumbhak* is Dr. Sen, and this witness learned from plaintiff that the bony growth was of very recent origin, a statement which is disproved by the earlier photographs of plaintiff and by the earlier explanations given.

We are left in this position, that there is an obvious change in the shape of the nose, and no consistent explanation of the change has been given.

Irregular scar over the left outer ankle

The plaintiff has an irregular scar over the left outer ankle. This was seen by the learned trial judge in court in December, 1933. It was found—with great difficulty and with the aid of a magnifying glass—in January, 1936 by Drs. Denham White, K. K. Chatterjee and Thomas. The plaintiff showed the site of the scar to us, and we examined the site with the aid of a magnifying glass. I am not certain that I was able to locate the scar. If any reliance can be placed on the evidence of Jyotirmoyee Devi, in 1921 the mark was so clear and definite that she could see it from a short distance away, *i.e.*, without being permitted to examine the ankle closely.

In the confidential report of Dr. Arnold Caddy on the proposal for insurance, against the item, "Describe any marks or other physical peculiarities by which applicant could, if necessary, be identified," occurs the note 'irregular scar over left ankle'.

It is obvious that in April, 1905, Ramendra Narayan Roy had a noticeable and fairly prominent irregular scar over the left ankle, it would not have been discovered and noted as an identifying mark, if it had not been prominent.

There is no evidence worth the name to show that the mark on the plaintiff is in exactly the same place as the mark on Ramendra, and no such evidence is to be expected. A number of witnesses deposed about a carriage accident, in which Ramendra Narayan Roy received an injury on his ankle. The evidence was very conflicting indeed, but this too was to be expected. So many years elapsed between the alleged accident and the date of deposition, that no contradiction in evidence could be regarded as unreasonable. There

is nothing in the scar on the plaintiff to show what was the cause of the accident, so that even if the witnesses gave honest evidence about the carriage accident, it does not carry us any further. The coincidence remains that Ramendra Narayan Roy had an irregular scar over the outer side of the left ankle, and the plaintiff has such a scar in a very similar position. The fact that the scar has almost disappeared might suggest that the injury to plaintiff was slight and had been caused after his arrival in Dacca, but it is to be noted that the defence has never doubted that the plaintiff bore this mark when he made his declaration in May, 1921. The learned trial judge was of opinion that the circumstances in which Dr. Arnold Caddy's report was produced in court tended to confirm the plaintiff's story.

The facts are as follows:

After Satyendranath Banerjee persuaded his sister Bibhabati Devi to leave Jaidebpur and to entrust the management of her affairs to him, it was he who corresponded with the Insurance Company, obtained the necessary certificates, and ultimately received payment of the sum insured. It appears that he kept copies of the affidavits and certificates supplied to the Insurance Company in furtherance of his claim.

When the plaintiff made his appearance in 1921, Satyendranath Banerjee hurried off to the Secretariat to consult the Board of Revenue, and apparently produced his copies of the affidavits and certificates before the Board. The Secretary to the Board of Revenue thereupon requested the Insurance Company to let him have the original papers.

He received the following reply:

"SCOTTISH UNION AND NATIONAL INSURANCE COMPANY"

City of Glasgow Life Branch

8, Old Court House Street, Calcutta,

Post Box No 246,

14th July, 1921

M H B Lethbridge, Esq., I.C.S.,

Offg. Secretary to the Board of Revenue, Bengal

Pol. No 74789—the late Kumar Ramendra Narayan Roy

Dear Sir,

Referring to your letter, dated 10th May, 1921, regarding the above, I have to inform you that to-day I have received an instruction from our Head Office in Glasgow to at once forward to you for safe custody (1) our file of papers containing evidence of death and attached correspondence, and (2) the original medical report on the above life.

Accordingly I enclose these papers herewith as per the attached Inventory on the understanding that should our Company or our Solicitors desire them, they would at once be delivered up.

BHOWAL CASE

The Inventory is sent in duplicate in order that you may return one copy with your acknowledgment thereon

Enclo
File of papers
Medical Report
Inventory

Yours faithfully,
Illegible,
Assist Actuary "

The papers were apparently returned to the Insurance Company at once (*vide* letter of M H B Lethbridge, dated the 15th July, 1921)

"No 8766 W

8, Old Court House Street,
Calcutta

To

The Assistant Actuary, Scottish Union and
National Insurance Company

Sir,

With reference to your letter, dated 14th July, 1921, regarding Pol No 74789 (Kumar Ramendra Narayan Roy), I am directed to return the file of papers containing evidence of death and original medical report received therewith, and to say that the Court of Wards does not consider it proper to take charge of these papers or that they should be handed over to either party to the dispute. If required in evidence, it would be more proper if they were produced from your custody

I have, etc ,
M L,
15-7

15-7-21

Paper made over to Mr Brown by me

M L,

15-7 "

There is nothing on record to show that any of the parties were allowed to see these originals

In 1930, after the suit was instituted, the defendants moved the court to call for the six original affidavits from the Insurance Company they did not call for the medical report. The original affidavits were all received and filed in court before the end of January, 1931

In 1934, the plaintiff moved the court to call for the medical report, and when it arrived, put it in as evidence

We have been asked to believe, firstly, that the defendants knew of the contents of the medical report and tried to suppress it, and secondly, that plaintiff was unaware of the contents but was eager that all available

evidence should be placed before the court. As I have pointed out, there is nothing on record to indicate that the defendants had any knowledge of the contents of the medical report, or any idea that it would be of assistance in the case. There is also nothing on record to show that the plaintiff was ignorant of the contents of the report before they called for it. There is literally no evidence one way or the other. In my opinion, we are not justified in drawing any inferences from uncertain and unfounded speculations as to the motives of the parties. I cannot see that the circumstances in which the report was produced lend any assistance to either party.

Nobody has ever denied that Ramendra Narayan Roy had a scar, the evidence of the defence witnesses is no more reliable and no more unreliable than that of the plaintiff's witnesses as to the origin of the scar. The only reliable evidence about it is the medical report. The fact that the plaintiff has a similar scar in a similar place is a circumstance in his favour, but is by no means conclusive.

Syphilis

One of the few facts known with certainty about Ramendra Narayan Roy is the fact that he was suffering from tertiary syphilis at the time of his apparent death in 1909. He appears to have contracted the disease sometime after April, 1905, because in the medical report drawn up by Dr. Arnold Caddy on 2nd April, 1905, it is stated that there is no evidence of syphilis (past or present).

The parties are agreed that at the time of the supposed death of Ramendra Narayan Roy, he had gummatous ulcers on arms and legs, and that his elbows were bandaged on this account. The parties are not agreed regarding the secondary sore. The plaintiff and his supporters asserted that Ramendra Narayan Roy had a syphilitic bubo in the left groin which was operated on by Elahi Doctor. The defence case was that if any bubo appeared, it dissipated, and no operation for bubo was performed. The defence suggested that Elahi Doctor was a mere quack who would never have been entrusted with the performance of a serious operation on a Kumar of Bhowal, but the plaintiff produced a certificate to show that Elahi Doctor had qualified as surgeon.

The plaintiff and his advisers recognised the importance of the fact that Ramendra Narayan Roy had syphilis, and they had plaintiff examined by four different doctors at least before they closed their case. The plaintiff himself deposed that he had had syphilis, and the four doctors gave evidence regarding their examination of the plaintiff's body in order to show that he had had syphilis.

When the defendants opened their case they petitioned the court to direct the plaintiff to submit to medical examination by the defendants' doctors. Every conceivable objection was raised by the plaintiff to this being done, and ultimately the plaintiff only consented on condition that the examination should be held in the presence of the plaintiff's doctors, and that the plaintiff should be allowed to examine his doctor to rebut any evidence that might be given by the defendants' doctors. This was allowed by the learned trial judge and the plaintiff was examined jointly by three more doctors all of whom have deposed. We thus have the evidence of seven medical men on the subject of syphilis. It is interesting to note what was the evidence of syphilis when plaintiff closed his case, what was the

evidence subsequently given, and the manner in which that subsequent evidence was obtained

PLAINTIFF'S ACCOUNT

The plaintiff himself deposed as follows "I had syphilis I had this 4 or 5 years before I went to Darjeeling I got it from a woman The attack appeared first in the penis A doctor treated Trailakhya Doctor (ডাক্তার) 'treated me The members of my family knew about it Medicines were applied Bocha, Naisha, servants applied it There is a *til* on my penis about the middle of the foreskin

The syphilitic sore in the penis took a month or two to heal Then as the result of that I had বগী (bubo) on the left side This occurred about a month after the sores healed A doctor treated me for the bag He did an operation Elahi Doctor was the doctor who did the operation at Jaidebpur then He saw my bubo and operated upon it There is a mark of that still This healed Later appeared syphilitic sores in both the legs and both arms (Shows a small blackish spot on the left forearm, and bares left forearm where he says there are marks, his fingers feel, and looks for them, as though searching for them, and then shows a mark—a small cavity in the skin about 12½ inches from the wrist Shows some marks in the dorsal side of both legs—scattered, small, darkish, not quite visible without scrutiny)" And in cross-examination the plaintiff said

Q—Did you hear the word "Chancer" (Chancre?)

A—No, say in Bengali

Q—"Gumma"?

A—It is "syphilis"

Q—The word "syphilis" you use—is it Bengali or English?

A—I don't know

Q—The word "Gumma" is English or Bengali?

A—I can't say Children and women even know this word

Children and women of any *bhadroloque* family know it Women and children of anybody's family know it

Q—What does "Gumma" look like to start with?

A—It is a sore with pus

Q—As big as a custard apple or as a মটর (pea)?

A—As big as a মটর (pea) It has pus in it

Q—Colour of the "Gumma"?

A—I can't say

Q—It swells?

A—Yes, like this (shows as big as a big marble) I showed marks of it in my arms Not symmetrical on both arms [better say, exactly in the same position on two (arms)?]

Not at the same position on the two arms

There were no eruptions on my body except on two arms and two legs The marks on my leg were those of gumma

In the *bagi* (bubo) I had there was no pus I can't say whether it was hard I had the attack of syphilis 4 or 5 years before I went to Darjeeling I can't say how long after the first sore on the penis I had the gumma I can't give it by guess I can't give any idea of the interval whatever

I said, Elahi Doctor operated on my *bagi* I can't say if he was a passed doctor or an *Anari* (quack in the context)

Q—You mean *इतरे* (quack) ?

A—I don't understand the word

I might have paid him fees, but he was my tenant—the tenant of my estate At the time of this operation my mother was living It was 4 or 5 years after my father's death I might have paid him a fee in private I paid it private as I had an (*sic*) pocket money of Rs 500/- per month Each brother got that The estate paid the costs of medicines for tenants and officers I can't say if our requirements also came out of the estate

Elahi Doctor is dead

Q—Did he operate with a split bamboo or with a knife?

A—A knife

Q—What sort of knife?

A—I can't describe it

Q—You have seen the knife with which *Sahebs* cut up meat?

A—I have

Q—What sort of knife was used in operation—how long?

A—Can't say

Elahi Doctor used to operate on *bagis* and abscesses When I got syphilis, Elahi Doctor, Nishi Doctor, Ketu Chakravarty and one other were in our service

Q—Ketu Chakravarty was a doctor?

A—Yes

The doctors I named and one Mahim Doctor, father of Ashu Doctor, were our family doctors I can't say whether Elahi or Ketu was so The Civil Surgeon was our family doctor too and got a pay

I treated the disease syphilis lightly, as nothing serious Everybody in our family knew I had it I knew it was a bad and serious disease I don't know whether Ketu was a passed doctor, or whether he was a Boxwalla homoeopath I do not know whether Elahi had read in any school

I have been cured of syphilis now By God Not by the sanniyasis They saw the marks on my body The disease gradually passed off The sores on my hand and feet gradually healed I can't say in the course of how long a time Whether in 1 year or two Or whether before or after I reached

Q—I tell you that the marks you show as syphilitic marks are not marks of syphilis at all?

A—They certainly are "

MEDICAL WITNESSES DR' NARENDRA NATH MUKHERJEE

The first of the medical men to depose in the case was *Doctor Narendranath Mukherjee* In examination-in-chief, he deposed

"Q—Did you meet Kumar Ramendra Nayayan Roy after 1917 and before to-day?

A—Yes, twice

Q—Is syphilitic bubo generally indurated or suppurated?

A—Generally it is indurated

Q—(Shown certain scars on the legs) Do these look like scars of tertiary syphilis?

A—It is very difficult to say that, but tertiary syphilis with formation of tutaneous (cutaneous?) gumma breaking might leave scars resembling those that I just find on the legs of plaintiff Some of these scars appear to me to be white in colour, a bit depressed with a marginal pigmentation Tertiary syphilitic scars are generally white in colour and depressed, and some of the scars that are here are like that

Q—What would be the colour of marks left by secondary eruptions of syphilis?

A—Copper colour generally

Q—Do they disappear?

A—Yes, with proper treatment or with age skin eruptions generally disappear

(Shown tongue which is examined by the witness) On the under surface of the tongue I find a fibrous band And there is a cystic-fill on the floor of the mouth looking like the formation of a cyst The fibrous band appears to me to be adherent to the floor of the mouth"

And in cross-examination

"Q—Were you shown any marks on his body before to-day?

A—Yes

Q—When?

A—On both these two occasions "

"Q—Regarding these scars on the legs, can you mention what their age is?

A—They must be old

Q—How old?

A—That is very difficult to say

Q —You can't even say by approximation?

A —In this particular case I cannot

Q —Were you told in June or July, 1933, or day before yesterday as to what the importance of these scars were?

A —No "

"The cause of the tongue tie may be as a result of the correct inflammation caused by any specific inflammation—atoma—a gumma might produce that, being partly absorbed, leaving a fibrous band behind"

"Q —Then I take it that day before yesterday you held no further identification test?

A —Yes, I looked at the marks of ulcers (scars)

Q —The secondary marks of syphilis are symmetrical?

A —Yes

Q —Suppose one appears on the right cheek, another will appear in the left cheek?

A —Yes, generally "

DR. MACGILCHRIST

The next of these doctors was Dr. *MacGilchrist*. In examination-in-chief, he deposed

"Pigmented scars result from syphilitic ulceration. I have met the plaintiff at Dacca, this morning I saw such scars on plaintiff's body. When a syphilitic patient gets cutaneous rashes in the secondary age (*sic*), they usually show a coppery tint which helps diagnosis, but the coppery tint is temporary."

And in cross-examination

"Q —The tumour on the tongue. How long did you examine it?

A —1 or 2 minutes

The examination consisted in looking into the mouth under the tongue. I examined the skin for pigmented marks and extent of movements of the tongue. I did not find it.

Q —How long would it take for a growth from its inception to attain that size?

A —It is impossible to answer this question—to give a definite period. If it was, for instance, a gumma, it might take 2 or 3 weeks. If it was cystic, which probably it is, it would take 5 or 10 years. I am not mentioning these as limits.

Q —If it was a gumma, it would become a sore?

A —Not necessarily.

Most likely this one is a cystic growth, not a gumma. I mentioned gumma as an instance of rapid growth."

"I noticed no gumma marks on the plaintiff. I never said so. I noticed some marks—they had nothing to do with gumma."

To Court—I am referring to the pigmented scars."

DR BRADLEY

Dr Bradley was the next doctor to depose on this point He said

Q—Do you agree that syphilitic cutaneous rashes leave a copper-coloured stain for a time and tend to disappear?

A—Yes

I saw several scars in plaintiff's body and some of them might well have been caused by syphilis They were bleached-out depressions He would get the sores in the tertiary or third stage Gumma is a tumour-like growth or formation which occurs in this third stage I saw those bleached-out depressions, which might have been caused by syphilis, on the front legs and some on the forearms, and I saw a scar in the groin, but I don't know its cause "

Q—What is the syphilitic manifestation that leads to a bleached punched-out depression in the skin?

A—The gumma occurs in the third stage, the gumma, or the ulceration which is the same thing The gumma appears, breaks down into ulceration

Q—How long after the attack of chancre do secondary symptoms appear?

A—From 2 or 3 weeks to 2 or 3 years, generally speaking There is no rule about anything in syphilis

The secondary symptoms or eruptions may appear anywhere—stomach or back or anywhere

Q—Do they generally appear first on the stomach?

A—I do not know I don't know why they should first appear there

Q—What is the interval between the second and the third stage?

A—May be a few months or few years I have seen the third stage 25 years after the original infection

Q—Without treatment syphilis is never cured if the third stage had appeared?

A—Yes, and even with treatment it does not

I merely looked at the cyst under the plaintiff's tongue May be a matter of two seconds "

DR SAILENDRA KUMAR SEN

Dr Sen came at the very end his deposition runs

"I noticed two depressed white scars on the outer aspects of the legs, one on each, the one on the right leg being more prominent I saw smaller scars on two forearms They are smaller and depressed white and on the anterior surface, i.e., the front Such depressed scars might be due to the healing of deep excavated ulcers In this particular case, considering other facts I observed, viz., tibial nodes in both the legs and other acervation

including one scar of bubo operation, I am inclined to think that these ulcers are healed syphilitic subcutaneous gummata

To Court—I saw the mark of bubo operation on the left side I did not see the bubo of course—it is in the bubo region—on the outer part of that region I showed the scars on the legs and the arms to the court

I noticed a prominent node over the right nasal bone of the plaintiff, and a slight elevation of the left nasal bone—no node but elevation By nasal bone I mean the nasal bone proper, not the cartilage The node after thoroughly taking plaintiff's history and observation is probably syphilitic sub-periosteal node Periosteal is a thin membrane covering the bones of the body

The bridge of plaintiff's nose is firm—only there is a slight deformity because of the node The syphilitic pathological conditions or deformities are mostly acquired—I mean this particular deformity "

"I saw the plaintiff for the first time this morning During my examination of him he gave me a history of old syphilis Plaintiff himself gave this history

A node mostly comes in the tertiary stage of syphilis, but it may come also in the late secondary stage

Q—From the chancre to the secondary stage which is the interval?

A—The secondary stage from 6 to 12 weeks after the appearance of chancre The secondary stage may last for a variable period, approximately 2 to 3 years The period will be modified by treatment—antisyphilitic treatment

The tertiary may come after the secondary stage,—may be after 2 years or may be after any length of time—20 or 21 years—with gaps of quiescent stages

Q—After a node appears, it does not remain static unless there is treatment?

A—Sometimes it remains like that—it becomes sclerosed or fibrosed and may stay on like that or it may have other fates, if the germ then circulating in the blood is virulent

I asked the plaintiff how long he had the node, but he said he could not tell me the period, and said he noticed it অল্পদিন হইয়া (a short time ago) I thought he meant a month or so, but he did not say that, but said অল্পদিন (short time)

Q—What is the gland which takes up the poison?

A—The poison from the primary sore on any part of the external genitals will be carried to a set of glands known as inguinal glands which give rise to the disease commonly called bubo The operation of a bubo is done by incision on the skin to let out the septic (septic?) matter of the glands

Q—What is the position of the incision in relation to the glands?

A—It will be just over the infected glands—because the superficial set of glands may be affected in some cases or any isolated glands may be affected There are any number of glands there There

is a chain of glands there, called inguinal glands In purely syphilitic sores the gland affection is less in the particular primary stage—in the secondary stage other glands of (sic) parts of the body may be affected

Plaintiff did not give me more detail about the chancre—he could not give—except that he said syphilis থেকে sore হয়েছিল (from syphilis it resulted in sore)

He could not tell me the exact period after which the chancre healed I did not enquire, but he said it healed and after that the bubo came I did not ask him how long after the healing of the sore the bubo appeared I asked when did he have this bubo He said, '25 or 30 years ago' I did not subject the plaintiff to a Wassermann test I did not, because my knowledge says that in the late tertiary stage the reaction is negative, even if the man is syphilitic You will find it in Rose and Carles's Manual of Surgery and Dr David Lee's Venereal Disease—its diagnosis and treatment I asked the plaintiff when he had the gummata He said, 25 or 26 years ago I asked him when they had healed He said 'কয়েক মাস চিকিৎসার পরে নেই গেল, দাগ বয়েছে (it was healed up after a few months' treatment, there are marks) "

EFFECT OF MEDICAL EVIDENCE AT CLOSE OF PLAINTIFF'S CASE

This was the whole of the expert evidence on record when plaintiff closed his case It shows that plaintiff was examined again and again by doctors in order to prove that he was a syphilitic subject Dr Mukherjee, Dr MacGilchrist and Dr Bradley all examined plaintiff's tongue, and Dr MacGilchrist certainly had in his mind the possibility of there being marks of syphilis when he did so None of these doctors noted fissures in the tongue due to syphilis

Dr Mukherjee found only one class of marks which might be due to syphilis, viz, certain scars on the legs which might have been left by gumma The witness was not prepared to make a definite statement

Dr MacGilchrist found only pigmented scars on plaintiff's body which had nothing to do with gumma he saw no gumma marks

Dr Bradley saw some bleached-out depressions on front legs and fore-arms of plaintiff, and thought that they might have been due to gumma He also saw the so-called 'bubo' scar, but offered no opinion as to its cause

The evidence of these three doctors is very inconclusive Apart from the cyst under the tongue which might have had a syphilitic origin but probably had not, Dr Mukherjee and Dr Bradley found scars which could have been produced by gumma Dr MacGilchrist found no gumma marks, but found other scars which might have had a syphilitic origin At least one of these doctors saw the 'bubo' mark and was not prepared to say that it was caused by an operation for bubo

Dr Sen was prepared to go much further He identified the 'bubo mark' as the scar of a bubo operation he found scars on legs and arms which might be due to gumma He found also tibial nodes and a node on the nasal bone which might have been caused by syphilitic infection His cross-examination shows that plaintiff gave him a different story from that given in court

Such was the case when the evidence for plaintiff was concluded—
a bubo scar, scars on arms and legs possibly due to gumma, scars on
body not due to gumma, and nodes on tibia and nasal bone

SUBSEQUENT JOINT EXAMINATION BY DRS DENHAM-WHITE, THOMAS AND CHATTERJEE

Thereafter the plaintiff was examined in his own house by Drs Denham-White and Thomas on behalf of the defendants and Dr K K Chatterjee on behalf of the plaintiff Dr Chatterjee claimed to be the senormost syphilologist practising in Calcutta and claimed to be a specialist and an authority in that subject He went to Dacca from Calcutta especially for this examination He assured the court that until he saw the plaintiff, he had no idea that any of the marks he was to examine were supposed to be of syphilitic origin Yet he brought with him on the journey certain books on syphilis as well as general works on surgery

DR K K CHATTERJEE'S NOTE

The 14th of January, 1936, was the date appointed for the examination Dr K K Chatterjee arrived at the plaintiff's house half an hour before the defendants' doctors, and took the opportunity of making a preliminary examination in their absence He made a note of his observations in pencil, which, however, he did not show to the other two doctors That note is in these words

"Insurance 1905

Sy 1906-7=28 years
1 S₁ 1905 after insurance

During 1909
Poisoning May, 1909
Dead 8-5-1909

- 1 Pigmentation and depigmentation
- 2 Scar—subcutaneous tertiary syphilides gumma—granulous, Arms, legs
- 3 Hard nodes on tibia—tender
tender on percussion,
night pains on shin
- 4 Nose—poreostitis—*proliferation of viscera*
Breathing,
Snuffing
Ars poisoning
Treatment
10 and 12 yrs old
High arched palate
Sputum deviated
- 5 Primary sore—present
- 6 Diffuse psoriasis—rhagades
- 7 Testicular sensation "

as having a syphilitic origin, and Drs Bradley and Mukherjee were not prepared to be definite on the subject. It seems to me that the most that can be said is that plaintiff has a bony swelling on the nose, and five scars on arms and legs—all of which might have been caused by syphilis, but there is no certainty that they were so caused. They may easily have some other origin.

Dr K K Chatterjee may be an expert on syphilis, but it is clear that he was not telling the truth when he said that he had no reason to think that he was going to examine a person with marks of syphilis. Dr K K Chatterjee was less than frank with the other doctors and with the court. He went to find syphilis and interpreted almost everything he found as proof of syphilis. Whether he gave deliberately false evidence, or whether he was a bigoted enthusiast who found syphilis in every unexplained mark on the human body, may be arguable, but there is material on record to justify the less charitable of these views.

Even if the nodes and 'gumma' scars are really of syphilitic origin—which is doubtful—they are very trivial consequences of the disease. Ramendra Narayan Roy was in a serious condition. Plaintiff has stated definitely in his evidence that after the rescue, he did not receive any treatment for syphilis.

Even Dr K K Chatterjee was constrained to say

"If the ulcers of 1909, big ulcers on both arms and legs, are not treated or dressed or washed, I would give three months to him. He would get septic and die. Even if he is washed with water, but not antiseptic, it will make no difference. If washed with antiseptics but no dressing or treatment, his chance of life would increase 5 per cent, roughly speaking. If washed, but not with antiseptic and covered up with cloth and not surgical dressing, the chance would be less."

In short, the marks on plaintiff's body do not prove conclusively that he ever had syphilis, and even if of syphilitic origin, cannot be reconciled with plaintiff's syphilitic history as given by himself.

It may be added that if the evidence on the side of the plaintiff to the effect that Ramendra Narayan Roy had an operation for bubo, be accepted, it is sufficient to put the plaintiff out of court. It is of no avail to say that a layman might have mistaken this for a bubo. A competent surgeon, such as Elahi Doctor, could not have made the mistake, nor could he have any reason for misleading his patient.

The evidence regarding syphilis is almost conclusive, in my opinion, to show that plaintiff is not Ramendra Narayan Roy.

OTHER MARKS

There are a number of other marks on the person of the plaintiff, *viz*,
 a broken tooth,
 an abscess mark on the head,
 a boil mark on the back,
 a scratch on the right arm (the tiger claw mark), and
 a mole on the penis.

There is oral evidence to show that Ramendra Narayan Roy had all these marks. The evidence comes from interested sources or from people

whose statements do not carry conviction. Even the learned trial judge was not wholly satisfied with the evidence on these points, and thought that the only guarantee of its truth was the identity otherwise established. I am not satisfied that any reliance can be placed on the evidence which seeks to show that Ramendra Narayan Roy also had all these marks.

VACCINATION MARKS

The plaintiff has vaccination marks in a most unusual position, *viz*, the interior side of each upper arm. Dr Arnold Caddy's report shows that Ramendra Narayan Roy had two vaccination marks on each arm. Nothing is said in that report regarding any peculiarity in the location of the marks. Drs Denham-White, K. K. Chatterjee and Thomas were able to find only three vaccination marks on plaintiff, two on one arm and one on the other. When the marks were shown to us they were very faint, and a fourth mark was also shown to us which might possibly have been a vaccination mark. Even if it was not such a mark, the possibility of a vaccination mark disappearing cannot be ignored.

My conclusion on this point is that the vaccination marks do not help one way or the other, though it is rather surprising that the unusual location was not noted in the medical report, if Ramendra Narayan Roy had marks in the same position as plaintiff has.

GAIT

The learned trial judge has placed reliance on the evidence of Mokshada Devi and Hiranmoy Biswas in coming to the conclusion that the gait of plaintiff was the same as that of Ramendra. I have discussed the evidence of these two witnesses above and shown why I consider them to be unreliable. Moreover, unless there is something very striking about a man's gait, it has no value as a mark of identification. If there was anything striking in Ramendra's gait, the failure of other witnesses to notice it might be used against the plaintiff. I see nothing in this point.

VOICE

There is some conflicting evidence to show that the voice is the same, but the learned trial judge was content to say that there was no evidence of any difference. No stress has been laid on this point by the learned counsel for the plaintiff in his argument before us.

SIZE OF SHOES

One other physical detail requires notice. It was admitted by the defendants that Ramendra Narayan Roy had unusually small feet for his height and wore size six shoes. The shoes of the plaintiff made by a Chinaman were measured by the Chinaman and pronounced to be size six. We have seen the shoes. Without expressing any opinion whether they are really size six or whether the Chinaman's size six is the same as size six of an English shop in Calcutta, it is sufficient to say that the shoes produced

before us do not seem to be small for a man of plaintiff's height, and they are at least as big as size seven shoes worn by others

I attach no importance to this evidence regarding sizes it is not contended that shoes worn by Ramendra Narayan Roy were ever tried on by plaintiff and found to fit

SUMMARY OF RESULTS ON COMPARISON OF BODILY FEATURES

The facts obtained from a comparison of the physical features of plaintiff and Ramendra Narayan Roy are these

Complexion—fair in both men

Colour of hair }
and moustache } fair in both men

Height—approximately the same

Colour of eyes—brown in plaintiff,
grey or hazel in Ramendra

Nose—admitted difference in shape

Scaly feet—found in both men

Irregular scar over }
left ankle— } found in both men

Syphilis—Ramendra Narayan Roy had tertiary syphilis in a severe form It is not certain that plaintiff has ever had syphilis if he has, he bears only insignificant traces, impossible to reconcile with Ramendra's syphilitic history

The other details, on which the learned trial judge has relied, are quite inconclusive

When it is realised that conspirators would not choose an impostor at random, but would look for a man of the right height and colouring, these particular details lose their significance Irregular scars on the ankles of people who go about barefooted, cannot be uncommon If the fact that Ramendra Narayan Roy had such a scar was notorious, this scar on the plaintiff might have been caused after he was selected and before he was put forward definitely as the Kumar

The only really striking coincidence, therefore, is the scaly feet, and this is more than outweighed by the difference in the colour of the eyes and the extremely uncertain and trivial indications of syphilis on the person of the plaintiff

So far, therefore, am I from agreeing with the learned trial judge in his view that a comparison of physical features establishes so many points of agreement between plaintiff and Ramendra Narayan Roy as to render the identity of the two mathematically certain, that I hold that the comparison demonstrates almost conclusively that the two persons are not the same

MENTAL IDENTITY

We have next to examine the evidence by which it has been sought to establish that the mind of the plaintiff is the mind of Ramendra Narayan

Roy If it could be shown that plaintiff had the same memory and the same mental equipment as Ramendra, this would be sufficient to establish the identity. But one of the most extraordinary features of the case is that little attempt has been made to prove identity. The plaintiff and his advisers have rested content with criticising the attempts to prove lack of identity and with arguing that such lack of identity has not been proved. The defence sought to build up a definite picture of Ramendra Narayan Roy—a man who could read and write, but had no literary tastes and did not use a pen more than he could help, a man fond of all outdoor games, riding, polo, shooting, tennis, football, etc., a man accustomed to meet Europeans and able to understand English to some extent, and even to speak the language a little.

The plaintiff's party contended that Ramendra was illiterate except in so far as he could sign his name in Bengali and could sign it in several ways in English, that though he was a keen horse-man, he never played polo, nor did he play such games as football and tennis. They insisted that he was a man who knew no English whatever, and spent his days with servants and stable boys, shunning the society of educated men. The definite facts they conceded are that he was accustomed to hold the reins in his right hand when riding or driving, and that he always drove at headlong pace, that he was fond of riding on an elephant and could mount by holding the animal's ears and stepping on its trunk, that he was given to fornication, and that he had unattractive habits such as wiping the noses of small children and playing practical jokes on people who dared not retaliate.

DEFENCE ATTITUDE IN CROSS-EXAMINATION OF PLAINTIFF

The defence took up the attitude that it was useless to cross-examine plaintiff regarding many details of the past, particularly regarding what might be described as isolated incidents. In the first place, twenty-five years or more must have elapsed between the incidents and the date of deposition, many incidents would naturally be forgotten, or remembered in a distorted fashion, if the plaintiff was the genuine Kumar. Secondly, the plaintiff had been living for twelve years in the atmosphere of the Bhowal family, surrounded by members of that family and joining in their conversations. If there was a conspiracy to put forward an impostor, the conspirators had had ample opportunity to teach plaintiff a vast number of details about the past, and even apart from deliberate tuition, an impostor would pick up in that time a considerable knowledge of detail. Moreover, if plaintiff gave an account of a particular incident, it would be difficult to prove that account wrong. Unless there was written record of the incidents, defendants would have to depend on oral evidence, which might easily be contradictory and unconvincing. If there was a record, plaintiff's advisers might reasonably have had access to it. Practically the only subject in which positive proof of error would be forthcoming is topography, and mistakes in this might reasonably be explained by loss of memory. These are difficulties in the way of deciding, in any case, whether a claimant is an impostor or not, in the present case, there is the added difficulty that plaintiff pleaded loss of memory.

The position is that in respect of the answer to any question, plaintiff's counsel can and did argue

- 1 If the answer is right, this proves memory,
- 2 If the answer is wrong, this proves that there has been no tuition;

- 3 If the answer is "I don't know", this is explained by the loss of memory

On the other hand, defendants' counsel can and did argue

- 1 If the answer is right, this shows tuition or acquired knowledge,
- 2 If the answer is wrong, this proves imposture,
- 3 If the answer is "I don't know", this is proof either of imposture or forgetfulness

Whether the learned counsel for defence was right or wrong in the attitude he adopted is of little consequence now. It may be that he missed opportunities of proving that plaintiff was an impostor. We are not entitled to assume that plaintiff would have given (if further cross-examined) additional proof of his identity. Plaintiff must convince the court of his identity from the evidence on record, not from the evidence which he might have given. Similarly, the defence must rest content with the results obtained by cross-examination, and not ask the court to assume anything in respect of questions not asked.

As an indication, however, of the difficulty in dealing with this part of the case, two statements in the evidence given by the plaintiff may be considered. In the cross-examination the following questions and answers occur

"Q—Who were Commissioners or Collectors during 1309 to 1316?

A—Rankin Sahab was Collector once and subsequently became Commissioner

This was before 1316—how long before I can't say

Mr Hart was Collector for a time during 1309 to 1316, who else I can't say

Q—Mr Hart was Collector before you left for Darjeeling?

A—I don't remember

Q—Can you name any big Sahib before you left for Darjeeling?

A—Mr Garth, Manager of Nawab Estate

Q—He was Manager in 1316?

A—Can't say "

The answer regarding Rankin is correct in part. He was Collector during the period named, but was Commissioner during the period of plaintiff's absence from Dacca. Hart was Collector for some years after 1909 and before 1920. He was not Collector of the district before the disappearance of Ramendra Narayan Roy in 1909, nor after the arrival of the plaintiff in 1920 or 1921. Mr Garth was Manager of the Estate of the Nawab of Dacca.

Now it is clear that plaintiff could not remember Hart as Collector of Dacca, it seems equally clear that nobody would have deliberately taught him the names of Collectors of the period of his supposed absence from Dacca. Therefore, he must have heard Hart's name as Collector of Dacca, and if he is the genuine Kumar, have wrongly imagined that Hart was Collector during his time in Dacca district, or, if he is an impostor, have deliberately pretended to a memory he does not possess and have made a mistake. In neither case can it be genuine memory.

The correct answers regarding Rankin and Garth may have the same origin. There is no more reason to regard them as genuine memory than to regard the incorrect answer about Hart as memory.

The learned trial judge has accepted the correct answer about Garth as evidence of genuine memory, and has ignored the incorrect evidence about Hart and Rankin.

DIFFERENTIAL TREATMENT OF ORAL EVIDENCE ON EITHER SIDE

In dealing with the oral evidence on both sides, by which it was sought to prove what were the usual characteristics and peculiarities of Ramendra Narayan Roy, the learned trial judge has referred again and again to the following question put by counsel for the defendants to plaintiff's witness, Satyadhenu Ghosal, viz:

"Q That is, you found him to be a well educated, well polished young Bengalee aristocrat?", and from the fact that it was subsequently conceded that Ramendra Narayan Roy was by no means well educated, has drawn the conclusion that the evidence of the defence witnesses in these matters is not worthy of serious consideration. In other words, because counsel for the defendants in putting a question in cross-examination, put his case too high, the witnesses who deposed for the defendants on that part of the case must be held to be discredited.

At the same time, the learned judge noticed evidence given by the plaintiff's witnesses to prove that Ramendra Narayan Roy could not even count, and held that that evidence could not be true. In spite of that finding, however, the learned judge did not consider that the plaintiff's witnesses were in any way to be discredited. In my opinion, the evidence given by plaintiff's witnesses regarding Ramendra Narayan Roy's inability to count is obviously false evidence, and it shews that witnesses could be and were induced to give deliberately false evidence in order to establish the identity of plaintiff with Ramendra Narayan Roy. This fact must be taken into consideration in weighing the evidence given on the side of the plaintiff, and it is not sufficient to dismiss all the defence evidence on the point as perjured and prejudiced on account of their counsel's question to S D Ghosal, and at the same time to accept the evidence of the plaintiff's witnesses as above suspicion in spite of the fact that tutored and perjured evidence has obviously been given by some of them.

EVIDENCE OF IDENTITY AS GIVEN BY PLAINTIFF HIMSELF

In examining the evidence which has been offered to establish the mental identity of the plaintiff with Ramendra Narayan Roy, it is convenient to consider separately the evidence of identity obtained from the plaintiff himself and the evidence obtained from other witnesses. The examination-in-chief of the plaintiff does not furnish any material from which an inference of mental identity can be drawn. He gave in his examination-in-chief some details regarding the Bhawal family and the relationship between the various members, he gave certain details regarding the topography of Jardebpur,

and some regarding the childhood of Ramendra Narayan Roy, he mentioned certain incidents in the history of the family, such as the appointment of Meyer as Manager and the attempt to put the estate under the Court of Wards during the lifetime of Rani Bilasmani, and also the circumstances leading to the dismissal of Kali Prosanna Ghose from the post of Manager. But all this knowledge could easily have been acquired during the years since 1921 when he was living with Jyotirmoyee Devi as her brother.

In addition to the above details, he deposed to the identity of certain persons in a number of photographs, and to the existence of certain marks on the person of the defendant Bibhabati Devi. It is obvious that he could easily have learned since 1921 who were the persons in photographs in possession of Jyotirmoyee Devi, and the very fact that on the occasion of the *snadh* ceremony of Satyabhama Devi, there was such an unusual departure from custom as the taking of a photograph of the ceremony, might suggest that photographs were obtained for the deliberate purpose of teaching the plaintiff.

With regard to the marks said to have existed on the person of Ramendra Narayan Roy, the plaintiff has in fact merely described all the marks on his own person and ascribed them to Ramendra Narayan Roy. The evidence offered to prove the existence of these marks on Ramendra has already been examined.

The plaintiff mentioned one mark on the person of Bibhabati, the existence of which was denied by the defendant. The plaintiff also mentioned an alleged peculiarity in the size of the toes of Bibhabati's feet. If this peculiarity does indeed exist, it was more likely to be observed and noted by Jyotirmoyee Devi than by her brother Ramendra, and the knowledge of this peculiarity might easily have been obtained from the sister.

The plaintiff also deposed to three conversations with one Jatin Mukherjee in which he described past incidents correctly. The same incidents had previously been described by Jitendra Behari Mukherjee. It is at least worthy of note that the plaintiff did not describe any incidents of the past, regarding his knowledge of which later witnesses deposed.

The plaintiff gave his own description of the events at Darjeeling and his alleged wanderings with sannyasis. This evidence has already been discussed.

For the rest the plaintiff's examination-in-chief deals with events subsequent to his appearance in Dacca in the year 1921.

It is clear, therefore, that his examination-in-chief furnishes no material to justify the inference that he is mentally the same as Ramendra Narayan Roy would now be, had he survived. The knowledge evinced in the examination-in-chief is knowledge such as could easily have been acquired during the years which elapsed between 1921 and the examination of the plaintiff on oath.

CRITICISM OF PLAINTIFF'S CROSS-EXAMINATION

The cross-examination has been adversely criticised both by the learned counsel for the plaintiff and by the learned trial judge. It has been described as cross-examination designed to defeat the true Ramendra and not to expose an impostor, and as an examination directed to prove ignorance of words merely, and not of things.

The learned counsel for the plaintiff has gone the length of asking us to hold that the defendant's counsel should have asked plaintiff questions regarding incidents of the past, and the topography of the Bhowal estate, and the suggestion has been made that if these questions had been asked, the plaintiff could have given the correct answers. The learned trial judge seems to have been inclined to accept this suggestion. In my opinion, it is not open to us to assume what the answers would have been to questions which were not asked, nor to assume that such answers would be either right or wrong. It may be that the defence counsel lost an opportunity of disproving plaintiff's identity; it may be that further questions from him would have evoked the correct answers from the plaintiff. But the burden of proving identity was on the plaintiff, and the failure of the defence counsel to prove want of identity (if indeed there was such failure) was not sufficient to establish plaintiff's claim. Whatever the real or supposed defects in the cross-examination, the evidence must be examined solely with the object of determining how far it establishes the plaintiff's identity. The court cannot speculate regarding the effect of evidence which was not given.

In his cross-examination of the plaintiff, the learned counsel for the defendants endeavoured to show that the plaintiff was ignorant of games, such as polo, football and billiards, with which Ramendra Narayan Roy was familiar, that plaintiff was ignorant of ordinary Bengali terms with which every Bengalee *bhadralogue* is acquainted, and was unable to pronounce properly a number of test words in Bengali, that plaintiff was ignorant of English terms and English articles with which Ramendra Narayan was familiar, that plaintiff did not know people whom Ramendra Narayan must have known, and that plaintiff's total ignorance of handwriting was such as to shew that he could not be Ramendra Narayan Roy.

IGNORANCE OF ENGLISH

The evidence regarding Ramendra Narayan Roy's knowledge of English is not very satisfactory. J. T. Rankin, who is probably the most reliable defence witness on this point, stated that his recollection was perfectly clear that he talked to Ramendra Narayan Roy in English and that the latter answered his questions or remarks in English, but he made it clear that Ramendra was not able to keep up a sustained conversation, and his evidence suggests that Ramendra did little but give monosyllabic replies to Rankin's remarks. I can see no reason for holding that Ramendra was ever fluent in English. The evidence on plaintiff's side is that Ramendra Narayan Roy was utterly ignorant of English, but this seems to me unlikely to be the case in view of the facts that an English Manager (Meyer) and an English tutor (Wharton) were undoubtedly employed at Jaidebpur during his youth, and that most Bengalee *bhadralogues* are acquainted with a large number of English words.

But since Ramendra Narayan Roy's knowledge of English was undoubtedly very limited, the fact that plaintiff has practically no knowledge of English does not disprove the identity. Anybody with a very limited knowledge of a foreign language may easily forget all he had ever learned of it, if deprived of all opportunity of hearing or reading that language for a period of twelve years. In my opinion, the plaintiff's ignorance of English is not more than might be expected of Ramendra Narayan Roy, if the latter had wandered with *sannyasis* for a dozen years.

IGNORANCE OF ENGLISH ARTICLES OF CLOTHING

Similarly, the plaintiff's ignorance of English articles of clothing is not inconsistent with the truth of his claim. It is nobody's case that Ramendra Narayan Roy habitually wore English dress. If he wore it at all, it must have been on comparatively rare occasions, and he might easily forget the English names for such articles as braces, frock-coat, etc., after discontinuing the use of them for twelve years.

The only significant detail of this evidence is the evidence regarding dinner clothes worn by Ramendra and his elder brother when dining with Europeans.

In cross-examination, plaintiff made it quite clear that he had no recollection of English dinner clothes. Thus he deposed:

"I never dined with Sahebs. My elder brother did."

"I did not see my elder brothers' dress when he dined with Sahebs."

"The elder brother took his meals in the 'Guest House' when he dined with Sahebs."

"I did not see him go dressed from his room to the 'Guest House'. If I saw him dressed when going to dine with Sahebs, I have forgotten it. I can't say what sort of dress it was."

Q—What colour, blue, red or green or any other colour?

A—I don't remember."

There was no ambiguity in this evidence, and it was perfectly clear that plaintiff was disclaiming all knowledge of English dinner clothes, and in effect, asserting that he had never seen them. Such ignorance is not in itself unnatural, even if plaintiff had in fact seen English dinner clothes or even worn them in his youth.

EVIDENCE OF COACHING DURING PLAINTIFF'S DEPOSITION

But the plaintiff's advisers were not content to leave the matter there. In re-examination, five days after the above evidence had been given, they produced in court certain garments and asked plaintiff when such garments were worn. To this question he replied, "When Sahebs take their *khanas*."

I find it difficult to resist the conclusion that between the 16th and the 21st of December, 1933, plaintiff had received further tuition. This view is confirmed by several other similar incidents which occurred during his examination.

In Bengal, it is quite usual to refer to the Bengali alphabet as ক, খ, গ, ঘ, and to the English alphabet as A, B, C, D. The case made out by the plaintiff and his supporters was that Ramendra Narayan Roy was practically illiterate, that he could never read and write properly, that he learned the alphabets only, and apart from signing his own name, was unable to write.

In examination-in-chief on the 11th December, 1933, plaintiff deposed: "I had a tutor Dwarik. He came when I was 7 or 8. He taught me ক, খ, গ, ঘ the Bengali letters and A, B, C, D—these 4 letters."

Three days later, an attempt was made to get him to explain away this answer, though its absurdity must have been obvious at the time the answer

was given On the 15th of December, 1933, at the beginning of the cross-examination, plaintiff was asked whether he knew the Bengali months and answered (according to the record), "I do not"

Four days later, learned counsel for plaintiff raised the question whether the answer had been correctly recorded The learned trial judge's own recollection was that the answer was an "odd" one, but he thought that there was a possibility that he had not heard the answer correctly On putting the question again, a correct answer was given

The impression left on my mind by these incidents is that plaintiff was coached even during these days when he was deposing in the witness box

BENGALI SPEECH

The learned counsel for the defendants has contended that plaintiff is not a Bengalee and that this fact is revealed by his speech in the witness box

There is a great volume of evidence on record, on the one side, to shew that plaintiff spoke fluent Bengali of the Bhowal dialect almost from the moment of his declaration of identity in May, 1921 and on the other, to shew that plaintiff was unable to speak correct Bengali for years after his appearance on the Buckland Bund at Dacca

There is practically no documentary evidence on the point

In the general diary maintained at Jaidebpur Police Station, there appears an entry under date 19-6-21, 4-0 P M

"No 210—Miscellaneous information Storm and wind blew in great fury last night People in batches are coming and seeing the sannyasi and declaring him as the second Kumar of Bhowal and the sannyasi (ascetic) is speaking with the people in Bengali language
,"

The person who made this report to the police officer is unknown, and the report is, therefore, no evidence on the question whether the plaintiff was in fact speaking Bengali at that time On the other hand, the fact that such an entry should have been made indicates that doubt as to his ability to speak Bengali existed even then

The materials furnished by the plaintiff's own deposition are that even in December, 1933, after residing in a Bengalee family for more than 12 years, plaintiff was still speaking with a marked foreign (Hindi) accent, that the grammatical construction of his Bengali sentences was sometimes Hindi and not Bengali, and that he was unable to pronounce properly the Bengali names of his own boyhood acquaintances

HINDI ACCENT

That he spoke with a marked Hindi accent was admitted by a host of witnesses examined on behalf of the plaintiff, was found as a fact by the judge, and has not been questioned by the learned counsel for the plaintiff.

WRONG GRAMMAR

As regards the grammatical construction of his sentences, when asked in examination-in-chief whether it was true that he did not know Bengali,

plaintiff replied, 'আগে জানত—এখন জানি' (*age janta, ekhan jani*) জানত is a Hindi inflexion, not a Bengali one. This instance was so noticeable that the learned counsel tried to suggest to the witness an explanation, for the record continues thus

"Q —You understand জান্তান (*jantani*) ?

A —I do

Q —Why do you experience difficulty in pronouncing the letter "ন" (*ma*) as a suffix ?

(Objected to as the witness does not drop ন (*m*) at the end of words and also as the question assumes a difficulty not mentioned by the witness Disallowed) Subsequently in cross-examination, it was made perfectly clear that plaintiff could pronounce the final ন (*m*) without difficulty. The same grammatical error occurs again in his cross-examination

MISPRONUNCIATION OF BENGALI NAMES

As regards plaintiff's mispronunciation of the names of his boyhood acquaintances, he pronounced the Bengali name *Annada* as *Anda*, the Bengali name *Ambica* as *Ambaka*, and the Bengali name *Byomkesh* as *Byon Kesar*

The type of Englishman who spends a short time in France and thereafter introduces French words in his conversation at every opportunity, and the type of Bengalee gentleman who goes to Europe and denies all knowledge of his mother tongue on his return, are not unfamiliar. But the plaintiff is not to be classed with either of the above. From the very beginning doubts have been cast on his ability to speak Bengali, and I cannot imagine that he would continue to cultivate Hindi accent which might serve to defeat his claim. It may be safely assumed that plaintiff has not made any particular attempt to retain his Hindi accent out of motives of vanity. In the circumstances, his mispronunciation of Bengali names familiar to him from childhood, seems to me difficult to explain. Is it reasonable to suppose that an Englishman who went to Germany at the age of 25 and returned home after 12 years in that country, would continue throughout his life to pronounce William as Wilhelm? The peculiarities in the plaintiff's language in court in 1933 confirm the opinion expressed by defence witness K. C. Chunder, who deposed as follows

"I had the conversation with the sannyasi in Bengali

Q —What sort of Bengali did the sannyasi speak?

A —It is not possible for me to say anything about the exact words either of questions or answers, but my definite general impression is that the sannyasi spoke mixed Hindusthani and Bengali, and the Bengali appeared to me to be that of an up-country man "

"The interview lasted over half an hour

Q —What impression did the interview leave in your mind?

A —It appeared to me more like a publicity stunt, and I was glad to come away

Q —Can you remember anything about the grammar and the inflexion of the sanniyasi's Bengali?

A —It appeared to me that the grammar was all wrong, and the inflexion terminals and verbs were also wrong

* * * * *

He appeared to me from his mode of speaking, his accents, his mistakes in grammar, etc, I have spoken of before, as an up-country man "

K C Chunder had the interview to which the above deposition relates, in the year 1924, three years after the plaintiff's assertion of his claim K C Chunder was an independent gentleman of position he was serving at the time in Manikganj Sub-division of Dacca District and was, therefore, not wholly unfamiliar with the Dacca dialect It does not seem to me to be possible for him to have confused an up-country man's attempts at speaking Bengali, with the Bhowal dialect of a Bengalee

PRONUNCIATION OF NUMERALS

The attempts of the learned counsel for the defence to make plaintiff pronounce test words in Bengali led to strange results The learned counsel took the view that the Bengali numbers are shibboleths which betray the up-country man even when the latter is very fluent in Bengali accordingly he tried to make the plaintiff pronounce the numbers, but the plaintiff flatly refused to do so, not once but several times The evidence reads

"Q —Can you count up to 100 in Bengali?

A —I cannot I do not keep a shop

Q —How far can you count?

A —I cannot count

Q —Can you count from 60 to 70?

A —I cannot

Q —From 10 to 20?

A —No "

Then he was asked to count in Hindi from 60 to 70, or from 10 to 20 The question was put "You do not know the Hindi numbers between 10 and 20", and to this he answered, "I do not"

Later on the same day the following evidence was given

"Q —Count 70 to 80 in Hindi?

A —I can't

Q —From 80 to 90?

A —I can't

Q —Supposing I do it—একশী (81) ?

A —I understand

Q —বিয়াশী (82) ?

A —Yes I understand

Q —You repeat it?

A —I can't

Q —You are afraid that you would be caught?

A —No

I can't count from 80 to 90 in Hindi I can't count in Bengali from 80 to 90 I may have forgotten it May be I forgot it for my illness I can't count from 1 to 10 in Hindi may be I have forgotten "

On a later date, he was asked to count from 60 to 70 in Hindi and replied that he could not When the plaintiff was being examined in chief, he talked of 14 or 15 elephants, 15 or 16 pairs of peacocks and 40 or 50 horses, etc, shewing that he was familiar with the numbers and understood their meaning It is perfectly clear that his statement that he could not count, even from 1 to 10, is untrue, and that he was avoiding the pronunciation of the numerals.

SUPPOSED INABILITY TO COUNT

The learned trial judge also took the view that plaintiff could not possibly be unable to count, but he declined to draw any inference from plaintiff's refusal to pronounce the numbers It has been suggested on behalf of the plaintiff that he was not indeed unable to count, but that he was so enraged at the taunts and jeers to which he was subjected in cross-examination that he lost his temper and denied ability to count This explanation is most unconvincing If there were any substance in it, we should find that plaintiff in his temper refused to answer other questions in a like manner But that is not so Moreover, even if the explanation seemed acceptable, it would then be necessary for plaintiff's counsel to explain away the considerable body of evidence given by witnesses of the plaintiff, to corroborate the statement that he could not count Witnesses went to absurd lengths in their attempts to support the plaintiff's description of himself Thus—

Hemendra Kishore Acharjee Chowdhury deposed in examination-in-chief

"A —Could he count?

A —Never tested him

Q —Your impression?

A —I can't say—but perhaps he could count 2, 3, 5, but whether he could go beyond I had no occasion to know
My impression is that he could not much, and that he could not possibly count up to 100 as he was absolutely uneducated

Q —Is it your impression that he could count from 6 to 10?

A —I doubt if he could "

Another witness Rasik Chandra Roy Mahasay deposed also in examination in chief thus

"Q —Can you give any illustration of his ability to count?

A —He could count up to 9 or 10

Q —Give an illustration?

A —When Rai Bahadur Joges Mitra was Manager, an incident took place which I remember. The second Kumar happened to be in charge as others were away. He was going towards *Khajanchi Khana*, and I was walking behind him. As he entered the *Khajanchi Khana*, I felt a little fear and curiosity. He said to the *Khajanchi*, টাকা বাব কব, at that time there happened to be a bag of money. The *Khajanchi* terrified, said, "It is your money all of it, take it away." The second Kumar poured the contents of the bag upon the *faras* of the *Khajanchi khana*. Then the second Kumar thought something and said, "Give me the Rs 40 for which my mother has left an order." Then he started counting one, two, three up to ten, and then could not do it further, but asked the *Khajanchi* to count it for him "

Ashutosh Ganguli in cross-examination said

"The second Kumar could read the value of cards—such as 2, 3, 14 and 20, 20 being the value of the jack of trumps and 14 being the value of the nine trumps. Forty-seven is the score for ordinary game. The second Kumar I did not see compute this. He could not calculate up to 47. We would reckon the value of the tricks for him. He did not say he could not count, but his partner counted it. He could not count up to 47. He could not count up to 20, but knew the word বিশ (20) as the value of the jack of trumps. I did not see him count 7 plus 7 as 14.

Q —Had he the capacity to know that 7 plus 7 is 14, or 10 plus 4 make 14?

A —He knew the word চৌদ্দ (14), but not this. 5 points on a card he would call পাঁচ (5), but probably he had no idea of the units making up 5 "

Satinath Bandopadhyaya, who knew Ramendra Narayan Roy very well indeed, was asked

"Q —Did he know 'one', 'two' or 'three'?

A —I had no occasion to test. I do not know "

It is clear from this and similar evidence that the plaintiff's advisers understood the plaintiff's evidence as meaning that he was quite unable to count, and it is equally clear that they thereupon persuaded a number of witnesses to give deliberately false evidence to shew that Ramendra Narayan

Roy was similarly incompetent. The remarkable thing is that some of the witnesses who gave this obviously perjured evidence were persons of position and standing in society.

IGNORANCE OF GAMES AND SPORTS

With regard to the evidence shewing plaintiff's ignorance of games and of the pursuits in which Ramendra Narayan Roy is known to have indulged, it seems to me that it is not shewn that Ramendra was particularly interested in football, cricket or tennis. He may have watched these games being played, but there is no convincing evidence to shew that he took such an interest in them that he would remember the technical terms and the details of the games after the lapse of 24 years.

The plaintiff's complete ignorance of polo, racing, billiards and shooting is difficult to explain. The plaintiff's witnesses have for the most part denied that Ramendra Narayan Roy played polo more than a few times. In view of the evidence regarding counting to which reference has been made above, I find it difficult to attach much value to such denials made after the plaintiff's deposition had been recorded and the necessity had been recognised of making a picture of Ramendra to fit that deposition.

POLO

It is an admitted fact that Ramendra Narayan Roy was a keen horseman. In the confidential report made to the Insurance Company in 1905, occur this question and answer:

"Q—Are your habits active or sedentary?

A—Active, ride, shoot."

It is admitted that there were polo ponies belonging to the estate and that the youngest of the three brothers, i.e., Rabindra Narayan Roy, played polo frequently.

J. T. Rankin deposed as follows:

"I played polo when I was at Dacca. Apart from the town, I played it at Jaidebpur and at Narayanganj. The second and third Kumars played polo. I have played with them. I played with them at Jaidebpur and at Dacca. I saw them play 3 or 4 years after my arrival at Dacca, and I saw them play for 3 or 4 years. Of the second Kumar and the third Kumar, the second Kumar was the better player. I gave them tips as regards this play—taught them."

This evidence finds confirmation in the evidence of one of the witnesses who deposed before plaintiff was examined. Radhika Mohan Goswami stated that the second Kumar and Mr. Wharton would play polo, and that witness had seen them doing so *constantly*.

This version is also a probable one. The Kumars of Bhowal were wealthy and could afford to play polo. They were the owners of one of the most important estates in the province, and the local officials would be certain to try and induce them to join in such a game. The two younger Kumars, Ramendra and Rabindra, were keen horsemen, and therefore, likely to take up

such a game Further confirmation of the fact that they did so is found in the Racing Calendar of 1904 which contains this entry—

“POLO SCURRY

Rs 200 to the winner, Rs 50 to the second, and Rs 25 to the third
Handicap for polo ponies 14-1 and under, playing in the
Dacca Tournament 3 furlongs (Rs 190)

ZOE (Mr C H Holder) b aust m 14-1 (11-7) Ram Shaw 1

PHOEBE (Kumar Ramendra N Roy) br aust m 14-1 (11-7)

Mr E Holder 2

RANI (Kumar Ramendra N Roy) ck aust m 14-0 (10-10) Piper 3

Also ran Cock's Comb (Mr Rankin) gr aust g 14-0 (11-2)

Lansdowne, Nedshmi (Mr Rankin) gr a g 13-2¼ (10-7)

Johnston, Harlequin (Kumar Rabindra N Roy) gr aust g
14-1 (10-8) White

Won by a length, two lengths between second and third
Time 42 secs ”

From this evidence I am convinced that Ramendra Narayan Roy was accustomed to play polo at Dacca and at Jaidebpur and knew something about the game It is not unreasonable to suppose that during the years that elapsed between his supposed death and the examination of the plaintiff in the witness box, he would forget the lesser details of the game, the English terms and rules regarding fouls and crossing But it is difficult to believe that his mind would become a perfect blank on the subject

His evidence about polo is as follows .

“I do not remember if in polo play there is a goal keeper There may be in it ‘half-back’ I do not remember if in this play there is anything called ‘right wing’ or a thing like ‘centre forward’

Q —How long does a polo match last?

A —I or 2 hours, or 1½ hours About 3 hours I can't swear—I don't remember

Q —How high a horse is ridden in polo?

A —I never measured

Q —How is a horse measured?

A —As other things are measured ”

“In polo, there are two players on each side The play lasts for an hour and a half I was not a member of Dacca Polo Club

Q —Can you say what is foul in polo?

A —I do not remember.

Q —Do you know what is meant by cross করা?

A —I don't know

Q —What is the name of the bat with which the ball is hit in polo?

A —By a *lath*

Q —Its English name?

A —I don't know "

"I don't know what is meant by polo-baniards (banian) Nor what is meant by 'nearside back hand', nor what is meant by 'Offside back hand' Nor what is meant by 'chukker' I do not know how many half times occur in polo-match

Q —Could it be that it is for $7\frac{1}{2}$ minutes at a stretch?

A —I don't remember I don't know if $7\frac{1}{2}$ minutes is called the chukker "

"Mr Meyer played polo and knew all that sort of thing I did not play "

Later, he stated, "we played a little" His ignorance of English terms does not seem to me unreasonable, but his ignorance of the very elements of the game is difficult to understand. The importance of the polo-playing lies in the fact that plaintiff, by his own account, always holds the reins in his right hand, and his account has been confirmed by many witnesses. Accordingly the witnesses examined on behalf of the plaintiff have attempted to prove that Ramendra Narayan Roy also held the reins in his right hand whenever he rode or drove. But it is obvious that he could not have done so when playing polo. Plaintiff was obviously ignorant of the fact that reins must be held in the left hand when playing polo, and such ignorance is difficult to explain. Stranger still is plaintiff's apparent ignorance of the fact that people usually hold reins in the left hand in preference to the right. One would expect that a man, who was accustomed to riding and driving and accustomed to meet other people riding and driving, would be aware of such a fact, even if he held the reins in his right hand. But plaintiff gave the following story in his examination in chief

"From Jyotirmoyee's house I went to the railway station in Budhu's tum tum which I drove. I drove it myself. I drove it without any difficulty. Budhu first held the rein. I said, 'That is not correct. Hold it like this' (shows the grip of the right hand). I used to hold the reins in my right hand. I drove to the Jaidebpur station"

I attach no importance to the plaintiff's ignorance of English terms for the colour of horses, or of the different kinds of bits, but his ignorance of vernacular terms such as *kajar* (snaffle), *dahana* (bit) and *numdah* is not easy to understand, if he was a keen horseman.

HORSE-RACING

The plaintiff was cross-examined about horse-racing. His evidence on this point reads

"I might have seen a race. I did not see any. I know 'jockey' the man who rides a horse in a run. I never went to a race. I never saw a jockey. In our house there was a jockey who was a Manipuri. There were two such jockeys. They used to take the horses round * * * *

I heard of the races in Calcutta I might have gone to them once or twice 'Viceroy's Cup' is a run that takes place every year I do not remember the name of any horse that won Viceroy's Cup before 1316

Q—Can you name any horse that won the Cup?

A—My horse or any body else's?

Q—Your own, to begin with

A—I myself won the Viceroy's Cup

Q—In what year?

A—I can't say I myself rode the horse that won the race, but I can't say whether it was Viceroy's Cup

Q—Where was this race?

A—At Tollygunge

I do not know what the Tollygunge races are called I do not know what is meant by steeplechase The race I won might have been a hurdle race I don't remember the name of the Cup I got the Cup, not any money along with it

Q—Shew the size of the Cup?

A—I do not remember the size

My ^{ওজন} (weight) (handicap) was what was found To give the horses an equal chance, the horses are weighted I don't remember how the handicapping is done

Q—How and where are the weights put?

A—Don't know I can't say

Q—In a race, if a rider is put 8 and another 7-12, can you say what that signifies?

A—No, I can't say.

Q—May be 8 maunds?

A—No

Q—Then what?

A—I don't know

A 'stone' means ^{পাথর}. Pound is a measure like a seer and the like

In noting weights of jockeys, stones and pounds are used I had never been to the races, except the Tollygunge race, I mentioned I may have, but I don't remember "

The witness was re-examined on the subject of racing and deposed.—

"Q—You said to Mr Chaudhuri that you won the Viceroy's Cup Then you could not say whether it was the Viceroy's Cup, but it was at Tollygunge, and then you said, you could not say what was the size of the Cup or whether there was money along with it

Will you tell the court what you can recollect about it? (Objected to Allowed)

A—I remember I got a hunter in a Tollygunge Race—a thing like a whip made of leather with a deer horn handle and a silver band—the handle—a চাকু (whip) in front of the thing”

To corroborate the statement in re-examination, Jitendra Chandra Mukhopadhyay was subsequently examined, and deposed

“The second Kumar got a ‘hunter’ in a race The ‘hunter’ was one with an axe shaped handle, it was a cane with its head like an axe At the other end was a ‘lash’ Near the handle was a band—metallic band Something was written on the band I do not remember what, except that it contained the words ‘Jorhat Race’ or something”

And in cross-examination, the same witness said

“When the second Kumar got the ‘hunter’ I don’t know But I saw it in his room I knew for what he got it I don’t remember in what year he got it I was 14 or 15 or 16 when I saw it”

The Racing Calendar referred to above shews that horses belonging to Ramendra Narayan Roy were raced at Dacca, and one of the defence witnesses has mentioned in his deposition the fact that he met Ramendra at the races at Calcutta This is all the material evidence on the subject The positive evidence is not sufficient to shew that Ramendra Narayan Ray was a keen race-goer, and if the plaintiff had merely pleaded ignorance of racing, there would have been no justification for drawing any inference adverse to his claim from that evidence But the evidence he chose to give was that of a man entirely ignorant of racing, pretending to a knowledge he did not possess and making foolish guesses in answer to the questions asked The evidence was essentially false evidence The statement subsequently made by him in re-examination appears to me to be the result of further tuition

BILLIARDS

The plaintiff was questioned concerning his knowledge of billiards It was an admitted fact that there was a billiard table in the family mansion at Jaidebpur and that a well known billiards professional was brought to Jaidebpur to teach the Kumars That professional was examined as a witness by the defence, and I can find no reason to disbelieve his evidence The witnesses for the plaintiff who gave evidence contradictory to his evidence, have been completely discredited on other grounds Ramphal Shaw made it clear that Ramendra Narayan Roy, the eldest of the three brothers, was the best of them at billiards and the most assiduous at practising the game, but he stated that he was engaged to teach all three of them, that “In the evening Bara Kumar would always play. The other two Kumars would sometimes come and sometimes not come”, also that he taught the three Kumars from September to 15th November, and during the last 3 weeks of February and during the following March until he left for getting a table, and that at the end, the two younger Kumars were able to make breaks of 20 or 25, though at the start they could hardly make breaks of 10 It is obvious from this evidence, which has all the appearance of being true, that Ramendra Narayan Roy could play billiards It is not perhaps surprising that after 24 years, he forgot

technical terms such as "cue", and "mis'-in-balk", and "redloser". But the following evidence given by him seems inconsistent with any previous acquaintance with the game

He deposed —

"Q —You know a 'cue'?

A —What is it?

Q —Have you heard 'miss-in-baulk'?

A —I don't know

Billiard balls are made of wood or rubber—I don't know as I never played

There was a billiard table in the Rajbari I saw the play going on "

I find it difficult to believe that any one who has ever seriously played billiards could say that he did not know whether the balls were made of wood or rubber

SHOOTING

One of the pursuits of which Ramendra Narayan Roy was admittedly fond was shooting. In the Insurance report to which reference has already been made, shooting is mentioned as one of his occupations. The fact that he spent much of his time in shikar has been admitted by both parties. The plaintiff in his examination-in-chief in describing the daily routine of Ramendra Narayan Roy said, "After that (i.e., the midday meal) I would go out on *shikar* or wander about on an elephant". There can be no possible doubt, therefore, that Ramendra Narayan Roy was a keen *shikari*, and in view of the wealth of the family and their habit of buying from European shops in Calcutta, there can be no doubt that he was accustomed to the use of the guns and rifles ordinarily used in shooting in this country. His evidence on the subject reads —

"Q —You know the meaning of the word *target*?

A —No

Q —*Chandmari*?

A —What is shot at

I practised shooting at a *chandmari*—may be I did so. I do not know magpie nor cat's eye. Nor Bull's eye. Nor inner, nor outer. 'Cordite' may be the name of a gun. I don't know 'Wildbore' nor 'Chokebore'. May be the name of a gun. I know 'twelvebore', a kind of gun. It is gun rifle. A gun means the same thing as a rifle. (Says again) They are different. My nephew Budhu could shoot. I never talked about guns with him during the past 12 years. I don't know why rifle is called rifle. From a gun a bullet goes straight. From a rifle thus (shows a spiral movement) "D B B L gun". I don't know. I don't know its meaning.

Q —Double barrel breech-loader?

A —A bridge means a *পুঁজ*

(Says again) It is a kind of gun

Breech-loader is a kind of gun I can't say what sort I have forgotten

Q —You understand muzzle-loader?

A —I don't know English

Q —You said about a bridge?

A —You were talking about a bridge

Q —Did you ever select your own gun?

A —Karmacharies did so * * *

Q —What is the price roughly of a double-barrelled breech-loader gun?

A —I can't say * * *

Q —You said 12 bore What is its difference from 16 bore?

A —Don't remember now I can't say if I knew it before

Q —What is bigger, "12 bore" or "16 bore"?

A.—Can't say

I don't understand "smooth bore" * * *

I don't know the diameter of the barrel of a gun

Q —Is there difference in size between the breech-end and the muzzle-end of a barrel?

A —There is none

Q —You know that the muzzle-end is smaller?

A —It may be I know it may be

Q —Why is it made smaller?

A —I don't know

Q —I talk about shot guns?

A —I don't know I can't guess the reason I don't know the *পাল্লা* (range) of a shot gun Have I ever measured it? By *পাল্লা* I mean the barrel I don't understand "the range of a gun"

Q —Can ball cartridges (*বলি*) be fired from a gun? (A ball cartridge shown) Can you say what varieties of bores are in a rifle?

A —No 12, 16

Q —Bore 303?

A —Can't say

Q —*Banduks* used in *pultans* are rifles?

A —I don't know

Q —Police guns—rifles or guns?

A —Don't know

I don't know the names of the rifles used by soldiers in 1316

Q —Have you ever heard the name of Martin Henry?

A —I don't remember

Q —You know the *palla* of a rifle?

A —What is *palla*?

Q —How far it can hit an animal from? What is the Bengali word for it?

A —May be 200 or 300 or 400 or 1,000 cubits.

Q —The Bengali word for it?

A —কত দূর যায় (How far does it go?)

To shoot one has to aim That is the *ghora* (trigger) You have to aim (নিশানা ঠিক করতে হয়) and then press the *ghora*

Q —Supposing you see a deer 500 cubits off, you aim at it?

A —Yes

Q —There is a device for fixing the aim?

A —Yes, but I don't remember it

Q —You know what is meant by 'foresight'?

A —I don't

Q —You understand 'point blank range'?

A —I don't * * *

Q —Can you explain or describe the device for aiming—you know the meaning of "aim"?

A —I don't know

Q —You can describe the device on a gun to aim?

A —There may be a device, but I don't know

Q —(In Hindi) Is there any device on a gun for taking correct aim?

A —I don't know I understood the question * * *

Q —Can you name any of the rifles you had?

A —12 bore rifle

Q —Name?

A —I don't remember

Q —You knew them and have forgotten because you were ill in Darjeeling?

A —Might be

Q —You were a big *shukari* and knew the names of rifles you had?

A —I knew but I have forgotten

Q —Why have you forgotten?

A —I don't do *shikar* now * * *

I don't know the number of shots I do not remember if I shot birds Nor if I shot *bele hans* I don't remember the kind of birds I shot I don't remember if I shot snipe

Q —You know that to shoot a big bird and to shoot a small bird, shots of different numbers (are) necessary?

A —I can't say Birds can be shot with shots, not deer Not even small deer

Q —You understand shot 'B'?

A —Don't remember

Q —B B ?

A —Don't remember

Q —S S G ?

A —Never heard May be one can shoot deer with these I did not take any such shots when I went to Lord Kitchener We took *cartus* (কাৰ্তুস্) as pronounced (cartridges)

I don't know the expression "Big Game" Lord Kitchener and I went to shoot big beasts, but got no tigers Lord Kitchener came to shoot what I don't know In that *shika* I took with me *cartus* (cartridges) The balls inside might have been round or might be square But I don't remember I don't remember whether they were oval

Q —Can you describe the wound caused by a solid ball and the wound caused by a hollow ball?

A —Each will hit as it will hit

Q —(A cartridge shown)

A solid ball would pass through and not burst inside

Q —Any ball that bursts inside?

A —I don't know

Q —You knew, but have forgotten?

A —Yes

Q —Did you hear Dum Dum?

A —That is Calcutta

Q —Dum Dum bullets?

A —I don't know

Q —Lethal bullets you know?

A —I don't

Q —Soft nosed bullets?

A —No

Q —The bullet with a soft part?

A —I don't know

Q —You knew and have forgotten?

A —Yes

Q —“Smokeless powder”—you know?

A —There may be such a thing, but I don't know

Q —You knew?

A —I don't remember

Q —You must have known?

A —Can't recollect

Q —You knew “powder”? (English word used)

A —What one uses on the body

Q —Any other meaning?

A —I don't know

Q —Gun powder—you knew this expression?

A —I don't know

Q —You know *barud* (gun powder)—this word?

A —I don't

Q —You knew the expression ‘hammer-less gun’?

A —There may be such a thing, but I don't remember it

Q —You said, a *banduk* (gun) has a *ghora*. Have you seen a *banduk* without *ghora*?

A —May have seen, but can't remember

Q —You knew the expression “hammer-less gun” before? Have forgotten it?

A —I don't remember ”

The witness was re-examined at some length about shooting and guns, and deposed

“Q —You said you shot deer and tigers, etc. Did you hunt on foot?

A —On elephants. From elephant-back one shoots like this (shows) without taking an aim, as the elephant moves about

Q —You know ‘*banduker machr*’ (the point at the top of the barrel)?

A —It is on the *nal* (barrel) of the *banduk* (gun). I never called it a *kal* (mechanism)

Q —You heard the word *lukmat* (device or mechanism) before? (Objected to Allowed)

A —Yes

Q —You said to Mr Chaudhuri that “by *palla* I mean *nal* (barrel)”?
What do you mean? (Objected to, allowed)

A —I mean the longer the *nal* (barrel), the farther the bullet will go

Q —Have you seen such a thing as this? (Shown a thing marked
Ex XX) (Objected to Allowed)

[*Ex XX*—A lump of lead with a cross section roughly square in shape, each side of the square about 1 centimeter]

A —Yes I saw it at the Rajbari—it was made when bullets were exhausted Mekwin (Macbean?) used to make such things He used to make these for me

Q —What sort of guns you had?

A —No 12

Q —Any other number?

A —No—16

I had a single barrel rifle I used to shoot with No 12 *banduk* (gun)

Q —Can you shew what sort of *kartus* (cartridge) you took when going on *shikar*? (Objected to, allowed)

A —There is a round bullet in the *kartus* for No 12

Q —Heard the word *baruj* (gun powder)?

A —No In our parts *barud* (gun powder) is called *baruj*”

The witness was again questioned on this subject and deposed

“Seeing *Ex XX*, says—I did not know it was going to be brought here in court I used such a thing when I ran short of bullets in shooting tigers and deer

Q —You would put it in the *kartus* (cartridge)?

A —Yes I don't remember how long before I went to Darjeeling I used such a bullet It is made of lead I would shoot it from No 12 No rifle could be No 12 I can't say where this particular thing *Ex XX* was

Q —Do you know the *kendra* (centre) of a round thing?

A —No

Q —You know the centre of a round thing?

A —The *kal* (machine) is so called

I know that if the weights of the two halves of a bullet—if the radii differ, the bullet would not go straight, and also if the two parts differ in shape

Q —Do you think this thing (*Ex XX*) would damage the barrel, if fired?

A —It may, if it is big

Q—I ask—this thing in any case?

A—Only if it proves too big

This thing I would fire from No 12

Q—From such a cartridge? (Ex a(1))

A—Yes "

In my opinion, the cross-examination revealed a complete ignorance of guns and shooting, and not merely ignorance of a few English terms. The witness had obviously received further instruction before he was re-examined, but had not fully understood his lesson. I find it almost impossible to reconcile the ignorance displayed in this cross-examination with the known history of Ramendra Narayan Roy.

"GUEST HOUSE"

His cross-examination revealed the witness's ignorance of the inside of that portion of the family mansion known as the 'Guest House', but as he probably went but seldom into that part, he might have forgotten the details. Rather more extraordinary is his statement in examination-in-chief that when he went to Jyotirmoyee Devi's house at Chakkar, on his first return to Jaidebpur, all appeared familiar to him. It is admitted that the house at Chakkar was not built until after some time after the apparent death of Ramendra Narayan Roy at Darjeeling.

NAMES OF OFFICIALS

The witness was questioned about officials who were posted at Dacca during the lifetime of Ramendra Narayan Roy and admitted that he did not remember them. This inability to remember people who were well-known in the district before 1909 does not seem to me strange—it was not shewn that the officials named were well-known to Ramendra Narayan Roy.

The witness was questioned as to his memory of the Civil Surgeons stationed at Dacca before 1909. He deposed

"Naren Mukherjee was Civil Surgeon when we three brothers were at Jaidebpur. He came on many occasions, but I can't say about 1316. I do not know whether Naren Mukherjee has been cited in this case. I have not met him since 1316. Nor has he seen me, so far as I know. He may have seen me from a distance, but I never talked to him."

Dr Narendra Nath Mukherjee was a witness for the plaintiff and proved that the plaintiff was brought to the witness in June or July, 1933 and had an interview for about an hour and a half. Dr Narendra Nath Mukherjee retired as a Civil Surgeon, but he was never Civil Surgeon of Dacca District. The Kumars of Bhowal were well acquainted with the difference between a Civil Surgeon and other practising physicians. Plaintiff's mistake about Dr Naren Mukherjee being Civil Surgeon of Dacca is difficult to explain, his statement that he had not met the Doctor since 1316 seems to me deliberately untrue.

ABILITY TO READ AND WRITE

One of the topics on which the greatest controversy has raged is the extent of Ramendra Narayan Roy's ability to read and write. The defendants asserted that though by no means a cultured man, he could read and write without difficulty, and they produced a number of letters from the custody of Bibhabati Devi which were said to have been written by him. The plaintiff's party, on the other hand, contended that Ramendra Narayan Roy could merely sign his name in English and Bengali and that he was otherwise unable to read or write. There is a mass of contradictory evidence on the point. The oral evidence of members of the family seems to me quite unreliable, but there is evidence which came into existence before 1921 which throws some light on the matter.

EVIDENCE OF PLAINTIFF'S PRESENT KNOWLEDGE

Before discussing the evidence given to shew the extent of Ramendra Narayan Roy's literary attainments, the evidence given by the plaintiff as to his present knowledge should be considered. He deposed that he could sign his full name Ramendra Narayan Roy in Bengali, and that he could sign his name in English in three ways, viz, Ramendra N Roy, R N Roy and R N R. He was asked to identify the separate parts of his signatures, English and Bengali, and deposed

"Witness asked to sign "Ramendra Narain Roy" (He writes on a paper, *Ex Z(161)* Photo Album, II-1-43, which I have signed and which will be filed at the end of this deposition) Seeing this signature says

This part (marked (1) by me) is Romendra. This part (marked (2) by me) is Roy. This part (marked (3) by me) is Roy and this part is N (marked (4) by me)

I do not know বুড়াকর (compound word) I don't know whether বরেন্দ্র (Ramendra) has any বুড়াকর (compound word)

Witness signs, being requested by learned counsel on a paper (*Ex 10(5)(1)*, Photo Album, II-1-18)

This part is বরীন্দ্র (Rabindra) (1)

This is ঝ (ma) (2)

This is দবে অস্ত (3) (word ending with "da")

This is বাঁধ (Roy) (4)

দবে অস্ত (word ending with da) I knew from before. I have not learnt it anew. When I learnt to sign in my childhood when I made my first signature I made (to?) myself containing the letters "

These answers are hopelessly incorrect, except in two details. The witness identified the letter R in *Ramendra N Roy* as *Ramendra*, the letter M in the name as *Roy*, the Y in *Roy* as *Roy* and the N as N.

In the Bengali signature, he identified ব (R in *Ramendra*) as *Rabindra*, ঝ (M in *Ramendra*) as ঝ, ঙ্র (ndra in *Ramendra*) as 'daye anta,' and ণ (Na in *Narayan*) as *Ray*.

The learned trial judge has taken the two correct answers, viz, N in the English signature and ঝ in the Bengali signature as evidence of traces of real memory. In my opinion, it is clear that the witness had no idea of the component parts of his signature and made wild guesses, two of

which were lucky This interpretation is confirmed by the evidence given by the same witness on the following day

“(Witness asked to write his signature in full in English)

Q —You have not written *Narayan*?

A —I have written my signature

Q —Did you write *Narayan*, yes or no?

A —No I have written my full name (shewn the signature first written) I can't point out which part of my signature is *Narayan*. Nor which part is *Ramendra* Nor which part is *Ray*

Q —You want to change what you said yesterday?

A —I lost my head as counsel were doing *maramari*
I remember Mr Chatterjee was not present in the room then

Q —You pointed out yesterday which part was which?

A —I don't know the letters

(Shewn the paper marked * at the top)

What I showed yesterday was wrong as my counsel had gone out and my mind was depressed I do not know the letters ”

The witness summed up his own present state of ignorance in the following words

“What I wrote I know to be my full signature My full name is Kumar Ramendra Narayan Roy I don't know whether my signature contains or does not contain these names ”

The witness also stated that he did not know in what respect his various signatures in English differed from each other

It is obvious, therefore, that the plaintiff was quite illiterate, he could produce four signatures, but had no idea what the various parts of those signatures meant, and was unable to read anything, even one of his own names

EXTENT OF RAMENDRA NARAYAN ROY'S LITERACY

To shew that Ramendra Narayan Roy was almost equally ignorant, witnesses were examined on the side of the plaintiff to show that Ramendra was very wild in his youth, that he neglected his studies during his father's life time, and after his father's death gave up all pretence of studying As a result, it is said, he could sign his name in Bengali and in English and nothing more

In support of this version, our attention was drawn to three documents

After the death of the father of Ramendra Narayan Roy, one A H Wharton was appointed to teach the three Kumars colloquial English In his letter dated 25th July, 1902, resigning his post, Wharton wrote

“Not only have your sons neglected their studies in every possible way, but they have in no way attempted to reform their deplorably bad habits, and it is evident to me that they had no intention whatever of taking my advice or of accepting my tuition ”

In the year 1904 H C F Meyer was Manager of the Bhowal estates, and in June of that year he wrote to the Collector of Dacca in the following terms

"What is required is some authority to whom I could appeal, at present there is no one The two younger Kumars are helpless as far as business is concerned They have had next to no education The eldest Kumar is a very good-hearted lad, and as long as I am at his elbow, I can make him see things in proper light, he has business capacity

He himself has acknowledged many times that his mother is ruining the estate and things are getting worse, but when I try and get him assert himself and try and put matters right, he will not do anything He means well, and (if he had charge of the estate as *karta*) under my guidance would do well As regards the two younger Kumars—you yourself know that it is impossible to do anything with them They are constantly surrounded by low companions, who simply cheat them and get them to commit all kind of follies"

These letters indicate that Ramendra Narayan Roy was indeed wild and disinclined to study It seems to me a fair inference that his education was sadly neglected and that he was by no means intellectual in his pursuits I do not, however, consider that these letters prove absolute illiteracy

A third letter said to have been sent by Kali Prasanna Ghosh, one time manager of the estate, was also referred to by the learned counsel for the plaintiff and relied on by the learned judge The relevant portion was in strange unidentified handwriting below the signature of Kali Prasanna Ghosh This was inadmissible in evidence and need not be referred to In spite of the two letters from Wharton and Meyer referred to above, and in spite of the oral evidence given on the side of the plaintiff, I am convinced that Ramendra Narayan Roy could not have been so illiterate as was pretended It is admitted that there was a succession of tutors employed at Jaidebpur for the benefit of the three Kumars, and that some time before 1892, Ramendra Narayan Roy commenced his studies He continued these studies fitfully and negligently perhaps—until his father's death in 1901 That is to say, his studies undoubtedly continued for at least nine years His younger brother Rabindra gave up his studies at the same time as he did, and was referred to in the same uncomplimentary terms as he was, in the letters written by Wharton and Meyer The elder brother Ranendra had obviously acquired much more education, though even he could not be described as cultured or educated Letters of the youngest brother Rabindra have been produced and admitted There can be no doubt that he could read and write, even though he made grammatical and spelling mistakes in his writing True there is some evidence to shew that in the last year or so of his life, Rabindra tried to repair the deficiencies in his education, but I cannot believe that he improved from absolute illiteracy to the stage of writing such letters as appear at pp 22 and 23 in Part II, Volume I of the Photo Album

NO EVIDENCE OF ABSOLUTE ILLITERACY

Judging from the history of these three young men, one would expect that the extent of Ramendra's education and illiteracy would be intermediate between that of his elder and younger brothers Both of them could read and write, and it seems probable that he could do so too But apart from the mere question of probability and a consideration of the length of time during

which he was under tutors, there are two documents on the record which also indicate that he must have been able to read and write. If Ramendra Narayan was absolutely illiterate, this fact would have been known to his wife and to his wife's mother. Yet Bibhabati's mother writes about him

"It is not unknown to you either with what disdain and indifference Ramendra regards us. If we write to him, he does not reply to our letters, if we go to see him, he does not see us",

and again

"Far from coming, he does not ever want even to write us (*torn*) letter "

And Bibhabati Devi in writing to her mother about Ramendra, said

"But since you are commanding me to write, I shall certainly try to remonstrate with him to the best of my power by writing to him "

I find it difficult to believe that such letters could have been written about a man who was unable to read or write

But more convincing still is the deed of management executed by the three brothers on the 15th February, 1907, by which the duties and functions of the three brothers were prescribed. Among other provisions, is one that "all the works of the estate will be accordingly managed and performed jointly by Ramendra Narayan Roy Choudhury and the said Manager Rai Bahadur and both of them will sign all the papers." It seems to me inconceivable that this duty could have been imposed on Ramendra, if he was unable to read and unable to write anything but his own name

Lastly, inspection of the admitted signatures of Ramendra Narayan Roy shews that they were written by a man accustomed to writing. If it were necessary, therefore, to decide whether Ramendra Narayan Roy was able to read and write, I should have no hesitation in deciding that he could. But, as it happens, no such decision is necessary. For, whether Ramendra Narayan Roy could or could not read and write, it is obvious that the evidence given by the plaintiff as to the extent of Ramendra's knowledge and the manner in which he acquired his ability to sign is ridiculous and untrue. Whatever may be the truth, plaintiff's account is obviously false

His evidence is .

"I did not mind my lessons. I had a tutor Dwarik. He came when I was 7 or 8. He taught me ক (*ka*), খ (*kha*), গ (*ga*), ঘ (*gha*), the Bengali letters and A, B, C, D—these 4 letters. I did not mind my lessons. Dwarik Master tried his best and he said "You are a Raja's son. Learn at least to sign your names." I learnt this—both to sign in English and Bengali. I learnt nothing else

I signed in Bengali in two ways thus (writes signatures on a separate sheet)"

"I don't remember whether I commenced writing on slates or on paper. At the Dacca School I would take both. May be I took slates only. I may have taken papers too

Q—You scratched on either (অঁচড় মঁচড়)?

A—No

Q —You scratched?

A —No

I can't say how many years Dwarik Master tried to teach me at Jaidebpur

Q —He came to teach you when you were 7 or 8 So he taught you for 4 years or so?

A —I can't say

Q —If you take 8 from 14, how many years remain?

A —7 years

I learnt nothing from him I can't say by guess at what time he asked me to learn to sign my name

Q —You know a "Copy Book"?

A —I don't

Q —অদিলাপি (Model Copy Book)?

A —No

When Dwarik Master asked me to learn to sign my name, how old I was I can't guess

Q —6 years?

A —No, a child of six runs about

Q —Before you went to school?

A —I don't remember

Q —After or before your father's death?

A —May be after

Q —He wrote a signature and you imitated?

A —I knew and could write all the letters of the Bengali and English alphabet I wrote my signature, Bengali and English, and Dwarik Master (said?) it was all right After that I forgot all in course of time

Q —Did he write your signature for you to copy?

A —I wrote it and he said, "that is your name"

Q —Somebody spelt your name?

A —I wrote it myself, spelling it myself

Q —The word নারায়ণ (Narayan) also?

A —Yes

Q —Both English and Bengali?

A —Yes

I don't remember having written or spelt anything else.

Q —You know the word “stick”?

A —No

Q —“Men”?

A —No

Q —“End”?

A —No

I could not write anything other than my signature The letters of the alphabet I gradually forgot ”

HANDWRITING

The evidence on the question of Ramendra Narayan Roy's literacy has just been discussed But there is also evidence of experts on both sides given after a comparison of admitted signatures of Ramendra of 1909 or earlier, and admitted signatures of the plaintiff of 1926 or later.

EXPERT OPINION SOUGHT BY DEFENDANTS

S C Choudhury was formerly Government handwriting expert attached to the Criminal Investigation Department, Bengal In February, 1932, eight signatures in English of Ramendra Narayan Roy and a number of signatures in English of the plaintiff were submitted to S C Choudhury through the Commissioner of Police, Calcutta The following is the list of signatures and the note attached to them

“Ex 5(1)—List of documents annexed to Ex 5

Received from Mr L H Colson,
Commissioner of Police, Calcutta, on 22-2-32
Illegible

LIST OF DOCUMENTS

GROUP A

Hundies—executed by the late Kumar Ramendra Narayan Roy and his brothers

- 1 Seven hundies and one hand-note

GROUP B

Signatures of the impostor posing as Ramendra Narayan Roy

- 1 Four *Vakalatnamas* with signatures of the impostor as ‘Ramendra N Roy’ filed in Land Registration cases at Dacca in the year 1929
- 2 Three typed petitions containing eight pages in Land Registration Appeals 50 and 51 of 1929-30 filed before the Collector of Dacca, and bearing the signature of the impostor as ‘Ramendra N Roy’
- 3 Two petitions in Bengali in Land Registration cases Nos 2718 and 2719 of 1929-30 before the Land Registration Deputy Collector and signed by the impostor as ‘Ramendra N Roy’—six pages

N B—Signatures in Group A of Kumar Ramendra Narayan Roy underlined with a red pencil are to be compared with those of the impostor in Group B also similarly underlined. Five signatures from each group which are most dissimilar may be selected for comparison, and opinion with reason may kindly be recorded. Prints, enlargements as well as the negatives, are to be returned along with the expert opinion and the documents ”

“Ex 5(2)—Note annexed to Ex 5.

S S C

22-2-32

NOTE

Twenty-six signatures on twenty-six sheets of paper divided into two Groups A and B are herewith sent for comparison and opinion of the expert. If Mr S C Choudhury, handwriting expert, is not available, the specimens may be sent confidentially to some other competent expert whom the Commissioner of Police may select. Five signatures from each group which are most dissimilar may be selected by the expert for comparison, and his opinion with regard to them may be sent along with the twenty-six specimens, prints, enlargements and the negatives. The expert is requested to do the work personally and with as much care and attention as possible, giving full reasons for his opinion. The matter is to be treated as confidential. The papers are to be returned together with the opinion etc to the address of S C Ghose, 19, Lansdowne Road, Calcutta, and if he is not available, to Mr S. N Banerjee of the same address personally and on his signature of receipt. The fees will be paid on receipt of the bill by S C Ghose at the same address ”

MR S C CHOUDHURY'S REPORT

S C Choudhury examined these signatures and submitted the following report.—

“H. W 17-32

Encl to No H W 17-32/2, dated 9-4-32

Signatures of Ramendra N Roy

GROUPS A AND B

GROUP A—Signatures on Hundis marked A3, A4, A9, A17, A18, A20 and A23.

GROUP B—Signatures on Vakalatnama, dated 17-12-29 marked B1

Signatures on Vakalatnama, dated 2-12-29 marked B2

Signatures on typed appeal to the Collector of Dacca, dated 19-2-29 marked B3, B4, B5, B6 and B8

Signatures on petition to the Deputy Collector of Dacca, dated 30-11-29 marked B7

The examination of the signatures of ‘Ramendra N. Roy’ is handicapped to a great extent, as the two sets of signatures (Group A and Group B) have got a difference of 20 years between them. This gap of 20 years might again

have been affected by infirmity, disease, old age etc, which factor brings with it other variations than those which may happen under ordinary circumstances. Expert Hagan is of opinion that the 'effect which sickness or disease has upon the writing habit of persons in the production of their signatures is too varied to be discussed with anything like an accurate consideration of the subject'. And about the effect of old age on the writing or signature of a person, this eminent expert says, "It frequently happens in the writing of persons advanced in years, and in which declining muscular power and control is strongly manifested, that the writer again becomes a child between the struggles to will and to do, and reproduces the irregularities of form that come with the early efforts made when learning to write."

The examination in the present instance is done under this set-back. For an accurate and infallible consideration of the subject in such a case, signatures of contiguous dates (as far as this is available) are required to be examined. As far as the data present themselves it is found that—

- (1) The slope in the A series of signatures is 40° to the right at the beginning, increasing to 55° at the end. In the B series this is almost vertical (slightly inclined leftward) at the beginning, then from M to N it is inclined to the right 5° to 10° , and at 'Roy' it has reverted to the vertical position of the same degree as at the beginning.
- (2) In the A series of signatures the penhold is normal, the shading appearing in the vertical strokes. In the B series the penhold is lateral, the shading appearing in the strokes that are about 45° from the horizontal.
- (3) The rhythmic pressure on the pen found in the A series of signatures is not to be found in the B series. The hair lines in the upstrokes found in the A series have been replaced in the B series in some cases (*vide* B1, B2, B7, etc), by thick upstrokes.
- (4) In the A series of signatures the alignment has taken the form of a gradual arc (*illustrated*). In the B series of signatures this arc is to be found in the alignment (but in an accentuated form) till R. In some of the signatures (*e g*, in B2) it is erratic, the arc forming the other way (*illustrated*).
- (5) The even line quality of the A series of signatures is not to be found anywhere in the B series. The writing tempo is markedly slower and the strokes show impeded movement, marks of hesitation and tremor to a marked degree. The signatures in the A series show the writer's full control over the pen (except in a few minor instances as at 'e' and 'n' in 'Ramen' in A3), while in the B series of signatures the writer's control is weak to the extreme.
- (6) In the A series of signatures the pen-pauses are 'R - amendra - N - Roy'. Variation is found in some where the whole of 'Ramendra' is written in one operation. In the B series stoppages are found at the middle of the 1st 'a' and sometimes at the middle of 'e'. These pauses at 'a' and 'e' are unusual halts. The other pen-pauses are similar to that of the A series.
- (7) The garland curves found at the base of the letters in all the signatures in the A series are not found in the B series of signatures. Here they are angular in most cases. The arcs that

are found in a few instances in the B series are of a very poor nature and have more of angularity in them than of curves

- (8) It will be found that letters 'm' 'n' etc in the A series of signatures have all got retrace (*illustrated*), while in the B series 'm' and 'n' cannot be found anywhere to have retrace (*illustrated*) But there is total absence of retrace in 'd' in A3, and in this respect it is very similar to the 'd' of B6 Retrace in letter 'd' is visible in B4
- (9) The angle value (between the general and auxiliary slope) ranges from 30 to 35 in the A series of signatures In the B series this goes up to 70
- (10) There is a distinct similarity in the peculiarity of the form of letter 'R', and partly of letter 'd', between the A and B series of signatures, and to some extent with regard to the alignment mentioned in 4 The movement (by the wrist) is similar in both.

From the above it is seen that the characteristics in the A series of signatures are mostly different from those of the B series

Whether it is possible that the writer of the A series of signatures wrote the B series after a lapse of 20 years and whether the differences found are possible to have been caused by infirmity, old age or disease, or whether an independent writer of a very limited writing capacity imitated the signatures of the A series in B after a considerable amount of practice can only be judged by an examination of signatures of contiguous dates But it is to be noted (against the latter possibility) that a very considerable amount of practice is necessary to maintain the regularity of the characteristics found in the B series of signatures and then to put in the signs of infirmity or old age, and that it presupposes a superior power of observation and execution on the part of the imitator The first is a more probable theory than the second had the signatures in the B series been imitations, better imitations could certainly have been produced, and that some of the differences in the characteristics in the B series (from the A series) may be explained as differences arising from the accentuation or modification of the writing habit (of the writer of the A series of signatures) due to infirmity, old age or disease

S C C ,

Examiner of Disputed Documents

8-4-32 "

EXPERT APPROACHED LATER BY BOTH SIDES

Certain Bengali letters alleged to be letters written by Ramendra Narayan Roy to his wife were filed in court in a sealed cover at the beginning of the case These letters were photographed under orders of the court in December, 1933 Those photographs and photographs of some admitted signatures of plaintiff were taken by defendants' pleader to Calcutta in January, 1934 and made over to S C Choudhury for a further opinion The opinion was submitted on the 8th of January, 1934 In the meantime, on some date between the receipt by S C Choudhury of these papers and the submission of his report, a pleader acting on behalf of the plaintiff took some signatures of Ramendra Narayan Roy and some of plaintiff to S C Choudhury for opinion

Some of these were the same signatures as had already been submitted by defendants' pleader, and S C Choudhury refused to accept them from the plaintiff's pleader. He did, however, accept the new material and consent to give an opinion thereon. He gave that opinion on the 9th of January, 1934, and then on the 12th of January, 1934, deposed in Dacca as a witness on behalf of the plaintiff.

One P N Mukherjee, a pleader ordinarily practising at Alipore, and supposed to be an expert in handwriting matters, had been employed by defendants to consult S C Choudhury regarding the signatures and had a discussion with the latter before he submitted the report of the 8th of January.

As soon as the defendants realised that S C Choudhury had been summoned as a witness on behalf of the plaintiff, they brought P N Mukherjee to Dacca to cross-examine S C Choudhury. It has been suggested that this was grossly improper conduct on their part. It may have constituted a breach of professional etiquette to call in P N Mukherjee for the purpose of cross-examining this witness, at a time when a senior counsel was in charge of the defence case and was present in court, but it cannot be argued that either the witness or the plaintiff was in any way prejudiced thereby. S C Choudhury was well aware, at the time of his consultation with P N Mukherjee, that the latter had come to him as a pleader of the defendants, and had come to discuss the matter in the defendants' interest. It is not suggested that P N Mukherjee's conversation with S C Choudhury was confidential, in the sense that it was not to be repeated to the defendants; it is not suggested that P N Mukherjee practised any deceit on S C Choudhury. If P N Mukherjee had instructed the defendants' counsel during the cross-examination, and the questions had then been put to the witness by the counsel, no objection could possibly have been taken, and this breach of etiquette, therefore, did not in any way prejudice the plaintiff.

EXPERT'S BREACH OF PROFESSIONAL ETIQUETTE · SUSPICIOUS EVIDENCE

But the breach of professional etiquette on the part of S C Choudhury is of a different nature. It seems to me in the highest degree undesirable for an expert to consent to give opinions to two contesting parties. It is moreover difficult to believe that the plaintiff's pleader would have persisted in requesting S C Choudhury for an opinion after learning that this expert had already been consulted by the defendants, if the expert had not revealed the nature of the opinion already given.

S C Choudhury's conduct in consenting to give an opinion to the plaintiff after giving one to the defendants seems to me so suspicious that I attach little value to his subsequent opinions and to his evidence in Court. The opinion he gave in 1932, however, stands on a different footing, it was given at a time when he had not been approached by the plaintiff's agents.

VALUE OF EARLIER REPORT

The report is an extremely interesting one. Out of the ten characteristics in the handwriting selected for comment, seven are found to be radically different in the two sets of specimens. In the remaining three the differences

are not so marked. The opinion of the expert can be paraphrased in these words: the characteristics of the two sets of handwriting are different, but inasmuch as the characteristics are constant throughout the whole of the second set, this set cannot be forgeries.

The expert was obviously considering the possibility of the second set being in a feigned hand, *i.e.*, in the hand of a writer who was attempting to write in a style different from his natural style. But that is not the position in the present case. There can be no doubt that, apart from his ability to make these signatures, plaintiff is wholly illiterate. The defence case is that until he appeared in Dacca he was wholly illiterate, that after his appearance, he was given some signatures of Ramendra Narayan Roy to learn, and he learned to produce those signatures at first by copying the originals time and time again, and later from memory. Their case is that he never learned to write separate letters, and that he has no style of his own apart from these signatures.

It is obvious that if this procedure had in fact been adopted, the characteristics which are due to the manner of holding the pen, the manner of resting the weight of hand or arm on the table and the pressure applied to the pen would remain constant. There would be no feigning, and consequently no cause for variation in these characteristics. The reasons given in the report for thinking that the second group could not be forgeries are, therefore, of no weight, and all that remains is the fact that the characteristics of the two writings are markedly different, except that the alignments are not very dissimilar, the pen-pauses are occasionally the same, and there is a similarity in appearance in two letters, *viz.*, 'R' and 'd'. Considering that the "R"s and "d"s in Ramendra's handwriting are most unusual in appearance, this similarity means nothing. The disappearance of this unusual "d" from plaintiff's later signatures is much more remarkable.

The learned trial judge examined the evidence of the experts carefully, more particularly to decide whether the specimen signatures were the work of a wrist writer, a fore-arm writer, a finger writer or an elbow writer.

The number of wrist writers and the number of fore-arm writers is legion. Even if it were held that Ramendra Narayan Roy and plaintiff were both wrist writers, or both fore-arm writers, this would be no justification for holding that they were the same person. It would merely show that each belonged to the same very large class. The other identifying characteristics suggest that they were different individuals—if the characteristics were likely to survive 12 or 15 years' abstinence from writing. If after twelve or fifteen years' abstinence from writing, a man holds the pen in the same manner as before and rests his arm in the same manner and applies pressure similarly, he will produce a handwriting having similar characteristics to his old handwriting, even if the superficial appearance is different.

If, on the other hand, he holds his pen differently, writes at a different angle, rests his arm in a different manner and applies pressure in a different way, he will produce a different handwriting—as different as if he were not the same person as the one who wrote the earlier specimens.

"WILDEST" GUESS-WORK

If, therefore, the characteristics of the later set and the earlier set are the same, the inference that both sets are by the same hand may be justified, if the characteristics of the later set are essentially different from those

of the earlier set, the difference may be due to the fact that the writers of the two sets are different, or it may be due to the writer of the older set shedding his original characteristics and adopting new ones. But there is no method of ascertaining which of these alternatives is the correct one. The handwritings are different, whether the scribe of one is the same as the scribe of the other, or not, and any opinion to the effect that the scribe is the same, though the writing is essentially different, seems to me guesswork of the wildest description.

S C Choudhury's opinion proves that the handwritings are different. His guess that the scribe is the same, seems to me unconvincing. But the mere fact that the handwritings are different does not satisfy me that the scribes are necessarily different. If a man abandoned the habit of writing for 12 or 15 years, and then remembered only his signature and had no knowledge of the separate letters constituting that signature, he would almost certainly have lost his earlier writing habits and would have to acquire new ones. The evidence of the experts certainly does not prove that Ramendra Narayan Roy and plaintiff are the same person, but it does not prove conclusively that they are different.

SUSPICIOUS FEATURES IN PLAINTIFF'S HANDWRITING

The suspicious feature about the plaintiff's handwriting in my opinion lies in the marked superficial resemblance between his early efforts in 1926, on the memorial *Ex J*, and the gradual disappearance of this superficial resemblance, until we reach the pathetic attempt at writing made in court, *Ex 3(4) series*.

This appearance and disappearance of the superficial resemblance does tend to support the theory that the earlier specimens were made with a genuine signature in front of him as a model, and the later ones were the attempts of an illiterate man to reproduce the same from memory after (possibly) months of trial.

The learned trial judge was inclined to the view that nobody would think of teaching an illiterate man merely to produce certain signatures without teaching him the alphabet, or the separate letters in the signatures. I am not satisfied that such is unthinkable. When a man is taught from the alphabet upwards, he acquires a handwriting habit of his own, and of writers, only a skilled one can hope to produce a passable imitation of another's signature. If plaintiff is an impostor, and if he had been taught to write, it is improbable that he would have produced a signature in any way resembling those of Ramendra Narayan Roy. If he had been taught the meaning of each letter in the signature he had learned, and had been allowed to pretend that he remembered these letters, he would have been faced with the difficulty of writing other words containing the same letters and showing an extent of literacy which he does not possess.

CONCLUSION IDENTITY NOT ESTABLISHED

The learned judge's finding as to plaintiff's faint memory of the letters has already been discussed. My conclusion on this subject is that there is nothing in the handwriting of the plaintiff establishing his identity with Ramendra Narayan Roy, and there is one feature at least which suggests that the ability to write at all has been acquired since 1921.

Thus it seems to me that the plaintiff's own deposition does not reveal any knowledge that might not have been acquired with ease during the years of his residence as a member of the family since 1921, and on the other hand, it betrays an ignorance which is difficult to reconcile with the truth of his claim to be Ramendra Narayan Roy

It can safely be said that anyone, judging this case on the plaintiff's deposition and ignoring the rest of the evidence, would reject his claim without hesitation

OTHER EVIDENCE OF MENTAL IDENTITY

The evidence obtained from outside sources to prove the mental identity of the plaintiff and Ramendra Narayan Roy, consists of statements by a large number of witnesses to the effect that plaintiff was able to recognise them and to name them and sometimes their relatives at sight, and also evidence that plaintiff remembered a number of incidents, the details regarding which could not in the circumstances have been supplied to him by others

ALLEGED RECOGNITION OF PERSONS BY PLAINTIFF

I am unable to attach much importance to the so-called recognition by plaintiff of persons with whom he came in contact. The evidence of Jyotirmoyee Devi makes it clear that plaintiff was always accompanied by some member of the family who was in a position to furnish him with information. There can be no doubt that many of the witnesses who deposed that plaintiff recognised them at first sight, honestly believed that he did so. There can be no doubt also that if the plaintiff, without assistance from anyone else, was able to identify all these persons and to greet them by their own names or by descriptions that applied peculiarly to them, that evidence would be almost sufficient to establish his identity as Ramendra Narayan Roy. The question is whether he did so without assistance from anyone else. In the present case we have to consider the possibility of the plaintiff being an impostor assisted by a group of conspirators who were well aware of the imposture, and who were alert to assist plaintiff in his attempt to persuade people generally that he was Ramendra Narayan Roy. The evidence that plaintiff apparently recognised a large number of people would have no value, if it were shown that the circumstances were such that he might have done so on instructions from a fellow conspirator. It has been admitted that he was always accompanied by a member of the Bhowal family, and there seems to be no doubt that one or other of his companions had the requisite knowledge to be able to give him instructions. The only question is whether that companion had the opportunity to do so.

OPPORTUNITY OF INSTRUCTION BY COMPANIONS

From the evidence of some witnesses, it is obvious that the opportunity was present. For instance, *Dinanath Baisya* deposed

"I saw the plaintiff again in 1328 "by guess" Before he left for Darjeeling, the second Kumar used to call me Baisya, as I am a Baisya by caste. In 1328 I saw the plaintiff at Jyotirmoyee's house at Jaidebpur. I was there for 1 or 2 hours at this interview. I could not go near him as there was a crowd, saw him from a distance and came away. One or two days after I went again to that house. I went close to him, and took a good look at him. I recognised him after I was there for half an hour, and I stayed a

little longer He called out to me “বৈষ্ণু, কেমন আছ” (Baisya, how do you do?)” And in cross-examination, he deposed

“I could not recognise him that day I had seen him 10 or 15 minutes I was with him for 2 hours the next day, but not this day, though I knew him in half an hour I told nobody on the first day that I did not recognise him Next day I saw him quite close—about 4 cubits from him I looked at him for half an hour People were seated near him Of these I remember Budhu Jabbu might have been there There were 2 or 3 other people When I was looking at the plaintiff, during the half an hour I was doing so, he was talking to Budhu The plaintiff also glanced at me during this, but he was talking to Budhu He glanced at me once or twice I bowed to him, touching the ground with my hand, and as I stood he said, “বৈষ্ণু, কেমন আছ (Baisya, how do you do?)” Before that, I had seen in his face that he knew me When I bowed to him, he was not, at that moment, talking to Budhu Before that he was talking to him and glancing at me After he said, “বৈষ্ণু কেমন আছ (Baisya, how do you do?)”, I sat for a while and left”

Ganga Charan Banerjee described the recognition by plaintiff in these words

“Budhu and Jabbu were my students in the school Reaching Dacca at 9 A M, I went to Jyotirmoyee's house and went to her in the inner apartments She asked me when I had come and how I was I answered those questions and said nothing else We had no talk about the (স্বজ্ঞ) (second) Kumar at all Then I came downstairs I had gone upstairs only to see her Coming downstairs, I went into the same room in which the Kumar was on the day before I found there 20 or 25 people I knew none of them I sat down and began to look at the plaintiff He was seated dressed as on the day before, except that he had not the towel I began to look for the marks that the second Kumar had I did so while I was seated some 2 cubits off I did not notice where the second Kumar was looking I looked on for about half an hour I looked at him from head to foot I saw the same marks that the second Kumar had—exactly the same marks Then I was firmly convinced he was the second Kumar Then I went out for some reason or other, and got into another room and then returned to the room in which the plaintiff was I had gone out to have a smoke When I returned to plaintiff's room, he asked, “মাষ্টার এতদিন কোথায় ছিলে” (Master, where were you so long?) I had recognised him fully before this”

Pramath Ghosh deposed in examination-in-chief

“Subsequently in 1328 I saw this second Kumar I saw him at Jyotirmoyee Devi's house This was towards the end of Baisakh, 1328 I was then at Dacca I heard the rumour and went to see him I went to Jyotirmoyee's house two days On the first day I could not go near the plaintiff as there was a crowd, and hence had no speech with him Next day I went close to him After looking long and after noticing his hands and eyes and hair and leg (shows leg from top of the foot to the knee), I knew I asked him

“Do you know me?” He answered “পিসিমার কস্ম'চাৰী” (the officer of my paternal aunt) (father's sister), in a certain ঢেঁকা ঢেঁকা (halting) manner, but in Bengali”

And in cross-examination

“I went to see the plaintiff next day in the morning, at about 9 or 10 A M Till then I had no talk with anybody as to whether he was in fact the Kumar I went to Jaidebpur to ascertain that On the day I saw the plaintiff seated

in a room with his *jata* and beard. About "ashes" on his body I am not sure. In the same room there were some relations and one or two neighbours. The neighbours were Hem Chandra De and who else I can't say. The relations were Tebbu, Budhu and Jyotirmoyee. These knew me from before. I was an employee of Jyotirmoyee's estate then, though it was in the hands of a Receiver. I went close to the plaintiff and bowed to him. That is the first thing I did after getting into the room. When I bowed to him I did not bow to him as a Kumar or sannyasi. I bowed on the supposition that he was Kumar, as I had heard he was. I sat after I bowed to him. I sat $1\frac{1}{2}$ or 2 *hats* from him. Then I looked at his body. Then the chest was covered with a towel. The rest was bare. I looked at him closely. He also looked towards me. He saw me. I looked at him for 10 or 12 minutes. The people then were talking—the plaintiff, Budhu, Jabbu and Jyotirmoyee also were talking. I did not notice what they were talking."

The evidence of other witnesses suggests to me that the apparent recognition could not have been genuine, and therefore, must have been made on information supplied by a companion. Thus *Ashutosh Banerjee*, a railway official, who in 1908 had a long beard—reaching to his belly—thick, dense, well spread out beard—a beard which covered the whole cheeks, a moustache to match, and who when he saw the plaintiff in 1921 was clean shaven and practically bald, described the interview in these words:

"The first interview with plaintiff after plaintiff's return was in April or May, 1921. I can't (*sic*) how long after his arrival at Jaidebpur. I went 5 or 7 days after I heard of it. When I met the plaintiff, about 500 or 600 people were there. It was afternoon. I can't say if those people had come to test him, but I heard. I can't say if the second Kumar was there with a view to give a *daisan* to the people. I was there 10 or 15 minutes. I had a good sense of time. I saw him for 4 or 5 minutes before I recognised the second Kumar. He was not looking at me when I was looking at him. Budhu Babu was sitting by his side during the period. After these 4 or 5 minutes I was satisfied he was the second Kumar. I was satisfied by his appearance before he spoke. Budhu knew me of course. I was acquainted with Budhu during the second Kumar's disappearance. During the 4 or 5 minutes I was looking at the second Kumar, I can't say whether any other instance of recognition by the plaintiff took place. The second Kumar was speaking to people during these 4 or 5 minutes. Those people were in front of him. I cannot name them. I did not hear what conversation was going on. I do not remember any other instance of recognition by the plaintiff during these five minutes. I spoke to

It was Budhu who pointed to me and asked who I was. I was then 4 or 5 cubits from the plaintiff then, and there were people all around me. Budhu said "একে চেনেন (Do you know him?)" Then for the first time the plaintiff noticed me. Directly he saw me, he paused a little, and said, "ইনি আশু বাবু (he is Ashu Babu)." In 1921 I had gone bald (witness is almost bald except at the side and some thin hair in front)."

It is impossible to resist the conclusion that the information was supplied to plaintiff by Budhu.

Ashutosh Bandopadhyay gives the following instance of memory shown by the plaintiff:

"I talked a reminiscence with him. I asked him in Falgoun last if he recollected where he had seen me first. I asked this in my *basha*. He said,

“Rankin সাহেব যখন বাই” (when Mr Rankin was going away) This was a fact Before I put this question to him I had not mentioned this matter to anybody ”

But in cross-examination he deposed

“Mr Rankin's party at which I first met the second Kumar was in 1906 I was 12 or 13 then It was a farewell party at Northbrook Hall Mr Rankin was leaving Dacca on transfer He was the District Magistrate of Dacca The party was attended by 150 or 200 people I don't remember if I saw Mr Savage in the party

Q —Did you ever see Mr Savage?

A —Yes

Q —Did you see him at the party of 1906?

A —That I don't remember

In that party I had no talk with the Kumars ”

It is obvious that this cannot be a genuine conversation If the witness had no conversation with the Kumars at that party, and if the witness was aged only 12 or 13 years at the time of the party, it is inconceivable that the plaintiff should remember seeing him there

I have examined the evidence of alleged recognition by the plaintiff, and am not satisfied that there was genuine recognition in any case The witnesses deposed 12 years or more after the incidents described, and their recollection was probably inaccurate Some of them were apparently convinced that there was no opportunity for other persons to inform plaintiff about their identity, but I am not satisfied that there was any sufficient reason for such conviction

ALLEGED MEMORY OF PAST INCIDENTS

In addition to the evidence of recognition of people by plaintiff, evidence has been given to shew that plaintiff remembered incidents of the past known only to Ramendra Narayan Roy Three such incidents have been referred to as of special importance

The first of these incidents is the one described by N K Nag The evidence on the point has already been set out in discussing the supposed recognition of the plaintiff by this witness Now it is clear from the evidence that the incident was mentioned first by plaintiff, and not by Nag Therefore, the plaintiff did not shew knowledge of an incident first referred to by Nag If the incident was known to other members of the family, the fact that plaintiff was able to refer to it four years after putting forward his claim, would obviously be no evidence of memory on his part The witness himself admitted that he himself might have mentioned the incident to others, and added “The Bara Kumar and Mejo Kumar had requested father not to disclose it—not on this occasion, but on another occasion when the second Kumar had borrowed money from my father ”

It is clear, therefore, that the incident had been discussed in the family and might well have been known to those members of the family who were siding with the plaintiff N K Nag made it clear in his evidence that at first he thought that news of his intended visit to plaintiff had been given This indicates that there had been the opportunity to send such information If

plaintiff had information that Nag was about to visit him, the fact that he related this incident to Nag might have convinced the latter, but would not justify the court in regarding this as genuine recollection

The second of these incidents is the bird shooting incident described by *Gouranga Chandra Kabyatirtha*. This too has already been described fully in an earlier portion of this judgment. As I have already observed, it seems clear from the evidence of Abdul Hakim Khan that there must have been an incident like that described by *Gouranga Chandra Kabyatirtha*. The latter is the only witness to give any details as to the circumstances in which the question was put to the plaintiff and the answer given. The witness made it clear that there was a great uproar at the time the question was put, and that the question was explained to the plaintiff by writing interpreters for the witness deposed

"Ashu Doctor himself put the question I mentioned

Q—Had these questions to be explained to the sadhu, yes or no?

A—I cannot say—there was a "big" *golmal* when this question was put, and after that there was discussion

Q—Is it true that the question had to be explained to the sadhu in Hindi?

A—The assembled people talked, but I do not remember how it was put

Q—How did you understand it?

A—Half Bengali, half Hindi

Q—Is it true that some persons in the assembly had to explain the question to the sadhu?

A—It was explained, but how I must say

To Court—It was explained in the sense that the assembled people proposed that Ashu Babu must tell the name to somebody so that the answer might be checked

Q—What do you mean by this?

"Some persons from the assembly explained the question to the sadhu in Hindi or Bengali?"

A—Witness explained it in Bengali thus "সমাগত ব্যক্তিদিগের মধ্যে কাহারও ঐ প্রশ্ন হিন্দি কি বাঙ্গালাতে ব্যাখ্যা কবিসা দিয়াছিলেন (of the people assembled there, who explained it in Hindi or in Bengali?)"

This fact is true"

It seems to me to be clearly proved that Ashutosh Das Gupta gave an incorrect answer to the question, and that this caused an uproar. But I am not satisfied that there was no opportunity in the confusion and uproar for some persons to supply the plaintiff with the correct answer

The third of these important incidents was described by *Jitendra Behari Mukhopadhyay* before the plaintiff was called upon to depose

The description is as follows

"Next day I went out with him on an elephant. Budhu was with us. We proceeded towards Rajbagan. To the south of it is a *tal* tree. He asked when we approached "Was not a snake caught here?" It is a

fact that a snake was caught here 2 or 3 months after I went to Jaidebpur as the second Kumar's companion. An *ula-foia* also called Chandrakona snake lay in the sun under the *tal* tree. The second Kumar and I went to see it, and he said, "This must be caught." He made a noose with cane, at the end of a bamboo, and put it into the snake, and the snake thus caught coiled round the tree. Certain *mahs* and other people uncoiled the snake with great difficulty, and the snake was put into a kerosene box and brought home and some time after sent to the Alipur Zoo."

The witness was dismissed from service under the Court of Wards criminally prosecuted, though the cases were found to be false. I do not feel that he is a witness on whom any reliance can be placed. The evidence, therefore, that the plaintiff was able to recollect incidents known only to Ramendra Narayan Roy is far from convincing and does not suffice to prove the mental identity of plaintiff and Ramendra Narayan Roy.

SUMMING UP ON THE CASE

My conclusions on the evidence furnished by the plaintiff's witnesses may be summed up as follows:

1 The evidence proves almost beyond possibility of doubt that Ramendra Narayan Roy died in Darjeeling about midnight on the 8th May, 1909.

2 There was a wide-spread rumour in 1917 to the effect that he was alive and wandering with *sannyasis*, there may even have been a vague rumour before then. Such a rumour is no evidence that he was alive. The rumour of 1917 may have followed the appearance at Jaidebpur of a *sannyasi* vowed to silence. There is no reason to believe that any statement was made by that *sannyasi* to give rise to the rumour.

3 The story that anonymous letters were received shortly after the death in Darjeeling, and that the Madhab Bari *sannyasi* came and told the members of the family that Ramendra was alive, and that searches were made by Akshay Roy or by Sati Nath Banerjee, is fiction, pure and simple.

4 There is no reason to believe that the present plaintiff ever suffered from loss of memory.

5 When the plaintiff appeared in Dacca and Jaidebpur, he was not in fact recognised. Some people may have thought that they noticed a likeness in him to the dead Ramendra and have gossiped about the likeness, but until after Jyotirmoyee Devi had announced that plaintiff was her brother, nobody had recognised him.

6 Jyotirmoyee Devi did not recognise the plaintiff. She and her relatives started a campaign to persuade people that plaintiff was her brother and to produce evidence in his favour.

7 Neither the plaintiff nor his supporters behaved as Ramendra Narayan Roy might be expected to behave. They all behaved as though he would be rejected as an impostor.

8 The general physical appearance of the plaintiff,—his age, height, build and colouring,—is similar to that of Ramendra Narayan Roy. In addition, he has scaly skin on ankles and wrists, and had an irregular scar over his left ankle, both of which features were to be found in Ramendra. On the other hand, the colour of his eyes is different, the shape of his nose is different, it is extremely likely that plaintiff has never had syphilis, and

certain that his syphilitic history could not have been the same as that of Ramendra Narayan Roy, and

9 There is no evidence worth the name to shew mental identity, and on the other hand, the plaintiff's own evidence is difficult to reconcile with such identity

Or, the matter may be approached from another angle

It is certain that on one side or the other there has been a conspiracy. Either the plaintiff's principal supporters have conspired to put forward an impostor, or the defendants' party conspired in Darjeeling to obtain a substitute body and to fake a cremation on the 9th of May, 1909

The defendants' men had neither the motive nor the opportunity to conspire, nor did they behave like conspirators. On the other hand, the plaintiff's principal supporters had both opportunity and motive to conspire, and their behaviour was comprehensible, if they were acting in pursuance of a conspiracy, but was unnatural and incomprehensible, if they were not so acting

I am satisfied, therefore, that the plaintiff is an impostor, supported by Jyotirmoyee Devi and others in the full knowledge that he is an impostor

DEFENCE CASE AS TO PLAINTIFF BEING MAL SINGH OF AUJLA

Before leaving the case, reference must be made to the attempts made by the defendants to prove that the plaintiff is a Punjabee named Mal Singh of Aujla

It is clear from the statement of Debabrata Mukherjee recorded in May, 1921, that before he made his assertion of claim at Jaidebpur, plaintiff had already told people that his home was in the Punjab. Debabrata Mukherjee was a gentleman with no interest in this litigation, and a person whose word there is no reason to doubt. When the plaintiff deposed in court, he pretended complete ignorance of the Punjab and the Punjabee language. Thus he deposed in one place

"I never heard Punjabi talked", though he pretended to have toured northern India for years in the company of four Punjabees. It is clear that this answer was untrue. When asked the meaning of the word *changa*, he replied

"I don't know *changa*. To know that one must pass in Punjabee"

Before the end of May, 1921, J. H. Lindsay had deputed a police officer named Momtazuddin Talukdar and an officer of Jaidebpur estate, named Surendra Kumar Chakrabarty, to make enquiries in the Punjab and trace out, if possible, one Dharam Das Naga. This enquiry was made, because there were tattooed on the arm of the plaintiff, in the Urdu script, the words *Bawa Dharam Das da chela naga*, which being translated means—*naga* and disciple of Dharam Das. It is significant that plaintiff denied all knowledge of the meaning of this tattoo mark when he deposed in court, and denied that he had taken vows as a *naga*.

The two officers were supplied with certain photographs. They discovered Dharam Das, and took him before an Honorary Magistrate, and had his statement recorded. Therein Dharam Das identified the photograph shewn to him as that of his *chela*, Mal Singh of Aujla, who, after initiation, had

been given the name Sunder Das. It should be observed that it is admitted on both sides that the real Dharam Das was discovered in June, 1921, and taken before Lt Raghur Singh, Honorary Magistrate, and that he did make the above statement, and in view of the admission contained in the memorial *Ex J*, the plaintiff's party could scarcely avoid making such an admission. The plaintiff's case is that a photograph of some one other than the plaintiff was shewn to Dharam Das on that occasion. Surendra Kumar Chakrabarty submitted a report on this matter to the Assistant Manager of the Estate, and mentioned in that report that the photograph of plaintiff in a standing posture was shewn to Dharam Das.

DEFENCE WITNESS DHARAM DAS NAGA

Dharam Das was subsequently interviewed by the plaintiff's agents, and persuaded to go to Dacca. But he fled from Dacca suddenly without making any public statement in plaintiff's favour. During the trial, the defendants examined as a witness a *naga* sannyasi, who described himself as Dharam Das, the *guru* of plaintiff, and who asserted that plaintiff was his *chela*, Sunder Das. The plaintiff was allowed to examine witnesses to rebut this evidence, and to prove that the witness was not the true Dharam Das. Plaintiff, however, did not himself enter the witness box again to deny that the witness was his *guru*. But he produced three witnesses who asserted that the witness examined on behalf of the defendants as Dharam Das Naga was not the same person who had come to Dacca in August, 1921. Those witnesses were

Lalit Mohan Roy,
Sudhangsu Bhusan Paul,
Surendra Mohan Roy

No reason has been given why the plaintiff's *guru* should have disowned him, and therefore, if the court were convinced that the witness examined for the defence was the true Dharam Das Naga, this one fact would almost suffice to prove that plaintiff's claim was false.

The evidence of Lalit Mohan Roy, Sudhangsu Bhusan Paul and Surendra Mohan Roy carries no weight. Jyotirmoyee Devi made it clear that Dharam Das stayed quietly in her house during the Dacca visit, and did not mix with the public. Thus she deposed

"He stayed at my house 4 or 5 days or 3 or 4 days. He spent most of his time counting beads. I did not see him, or hear him speak to anybody except myself and the plaintiff."

And in cross-examination, she said

"The arrival of Dharam Das caused no commotion that I could see. I did not see any outsider come to him. He stayed in a room upstairs, and nobody had permission to go to him. He stayed for 3 or 4 days."

This evidence is not strictly accurate, as it is admitted that Dharam Das was taken to the house of Ananda Roy, pleader, but it is sufficient to shew that nobody in Dacca had the opportunity for more than a casual view of the sannyasi.

Jyotirmoyee Devi could not say, whether she would know him again, if she were to see him. Therefore, the statements of people, who could at best have had a casual view of the sannyasi fourteen years earlier, to the

effect that the witness was not he, can carry no conviction, more particularly, as according to the case made out by plaintiff's counsel, there was a distant resemblance between the witness' and Dharam Das Naga's facial appearance

There is one very suspicious detail in the evidence of Surendra Mohan Roy. A photograph was put to him, and he identified it as a photograph of the true Dharam Das Naga. No explanation was offered how and when this photograph was taken, nor how and when it was obtained. If it was possible for the plaintiff's advisers to obtain in this way a photograph of the true Dharam Das, it is difficult to understand their inability to get any news of the man.

I regard this evidence regarding the photograph as deliberately false evidence. When the witness Dharam Das was examined in court, a photograph of the plaintiff in a sitting posture was shewn to him, and he identified it as a photograph of his disciple, Sunder Das, formerly Mal Singh of Aujla, and asserted that it was the same photograph which was shewn to him during the enquiry in the Punjab in 1921. The 1921 report, however, proved that the photograph shewn to Dharam Das Naga in 1921 was the photograph of a man in standing posture. We have been asked to draw the inference that the photograph taken to the Punjab in 1921 was the photograph of somebody other than the plaintiff.

IDENTIFICATION OF A WRONG PHOTOGRAPH

The fact that the wrong photograph was identified by the witness in court does not seem to me to justify such an inference. The witness was unlikely to remember the details of the photograph shewn to him 14 years earlier, or anything about it except that it was a photograph of his disciple Sunder Das. His identification of the wrong photograph is not inconsistent with his honesty. So far as the witness' evidence is concerned, it matters little what photograph was shewn in the Punjab, because the witness deposed that the plaintiff was his *chela* Sunder Das. It is not disputed that the witness saw the real plaintiff.

The evidence of Lieutenant Raghubir Singh to the effect that the witness examined was the same person who was produced before him in 1921 does not convince me. This gentleman saw the true Dharam Das Naga on one occasion only, fourteen years before he deposed, and could not possibly have remembered his features with certainty.

The circumstances in favour of holding that the witness examined in court was the real Dharam Das are —

- 1 The plaintiff had not the courage to go into the witness box, and deny the identity. Such a denial would have carried some weight, as a court would hesitate to believe that a *chela* would deny the identity of his own *guru*,
- 2 No attempt was made by the plaintiff's party to produce anyone else as the real Dharam Das, and
- 3 Nobody was brought from the Punjab who was acquainted with the real Dharam Das, to deny the identity.

The fact that the real Dharam Das was examined in 1921, and identified a photograph produced before him, as the photograph of his *chela* Sunder Das,

proves that Momtazuddin Talukdar had a photograph with him of one Sunder Das, *chela* of the real Dharam Das

It follows that either Momtazuddin took the photograph of Sunder Das with him from Dacca or deliberately set out to deceive the Dacca officials by procuring a photograph in the Punjab and producing that photograph before the Naga. I cannot bring myself to believe that he would have dared to adopt the second of these alternatives

It is difficult to understand by what coincidence the Dacca officials could supply Momtazuddin with the photograph of a genuine *chela* of the genuine Dharam Das, both of whom were unknown to the officials, unless that photograph was a photograph of the plaintiff

There is confirmation coming from plaintiff's witness, Surendra Chandra Bhattacharjee, that plaintiff gave out his name as Sunder Das, though the witness tried to withdraw the statement in re-examination

I am satisfied that a photograph of the plaintiff was taken to the Punjab in 1921 and identified by the true Dharam Das as that of his *chela*, Sunder Das, formerly Mal Singh of Aujla. I am inclined to hold, though with some hesitation, that the witness examined in court was the true Dharam Das, and was the same man who was examined by Lieut Raghubar Singh in the Punjab in 1921. My hesitation is due to the fact that I find the evidence of the witness unconvincing in the extreme, but whether this unconvincing evidence proves the fact that the witness was not telling the truth, or merely that witness was a poor witness, I am not certain. The other evidence to prove that plaintiff is Mal Singh of Aujla is contradictory and unconvincing

CONCLUSION

The result is that I am inclined to the view that plaintiff is a Punjabee, but I am not satisfied that he was formerly Mal Singh of Aujla

The learned counsel for the plaintiff has argued that the failure of a party with all the authority and means possessed by the defendants, to prove that plaintiff was any one other than Ramendra Narayan Roy, is itself strong evidence of the truth of his claim. I cannot accept this argument. In the first place, in a country where sannyasis abound, it must often be difficult to discover the original name and address of a particular sannyasi without his assistance. In the second place, the failure of the defendants to disprove identity is not the equivalent of proof of identity by the plaintiff. As I have shewn above, the plaintiff failed utterly in his attempt to prove affirmatively, that he was Ramendra Narayan Roy.

In my opinion, the appeal should be allowed with costs. The judgment and decree of the original court should be set aside, and the suit dismissed with costs.

REPLY TO BISWAS, J'S STATEMENT AS TO VALIDITY OF COSTELLO, J'S JUDGMENT

At the close of his judgment, my learned brother Biswas, J. made a statement regarding the circumstances in which it was decided that the judgment of our brother Costello, J. should be read out by us in his absence,

and gave his opinion that that 'judgment' was merely an opinion, and had no legal effect

It is necessary, therefore, for me to indicate the reasons why I am unable to agree with my learned brother in this matter also, and in doing so, it is necessary for me to supplement my learned brother's statement of facts

It is quite true that the period from the 14th August, 1939 to 31st August, 1939, was spent in dictating the introductory portion of the judgment, and that there was no final discussion on the case at which definite and final agreement or disagreement was expressed

But, on the other hand, throughout the long hearing of the appeal we had numerous opportunities of discussing the various points in issue. On each day of hearing before the morning and afternoon sittings we discussed these matters again and again, and it was soon apparent which portions of the cases of the parties each of us could accept without difficulty, and which portions were more difficult of acceptance. I am unable to agree with my learned brother Biswas, J., that the views of our learned brother Costello, J., as tentatively expressed, were in accord with those expressed in the judgment already read out by my learned brother.

The published record of the proceedings in court will shew that my brother Costello, J. and I did not see eye to eye on all points, *e g*, my learned brother passed strictures on the conduct of some of the defence witnesses, with which strictures I was unable to associate myself, and it is clear that my learned brother Costello, J. would have had no difficulty in accepting some portions of the plaintiff's story which I found unacceptable, or in believing some witnesses whom I found unworthy of credit.

But our learned brother Costello, J. found great difficulty in accepting other portions of the plaintiff's story. I can remember three subjects at least to which in discussion we returned again and again.

The impression left on my mind when our learned brother Costello, J. left for England was that if he could persuade himself to accept plaintiff's version and plaintiff's evidence on a few matters which we had discussed, he would have no difficulty in deciding the appeal in plaintiff's favour. If, on the other hand, he found these obstacles insuperable, he would have to decide against plaintiff.

As to the legal effect of the judgment we are about to read, I am unable to agree with my learned brother Biswas, J.

The cases referred to in my learned brother's note are distinguishable. In none of them, so far as I am aware, was the written opinion sent with instruction that it be read out on behalf of the absent judge, while he was still a member of the court. The opinion was merely deposited with the Registrar preparatory to being read out by the judge himself, if he should be a member of the court at the time of delivery of judgment.

In the present case our learned brother Costello, J. has sent out his written judgment with instructions that it be read out on his behalf in his absence as his judgment in the case. Obviously, therefore, our learned brother has come to the conclusion that he is entitled to deliver his judgment in this manner. In my opinion, when one member of a bench of judges chooses a particular method of delivering his judgment, his colleagues on the bench are not entitled to sit in judgment on him and decide whether or not his method of

delivering judgment is a proper one. We, as his colleagues on the bench, are bound, in my opinion, to treat a judgment so delivered as a valid judgment, unless and until a superior court should decide otherwise.

If, however, I am called upon to express any opinion in the matter, I must hold that the judgment is a valid judgment. After the passing of the rule to which my learned brother Biswas, J. has referred, the reading out of the opinion of an absent judge is sanctioned by the Code, and a judgment so read out has the same force as if it had been read out in open court by the absent judge, in person.

The only serious criticism is based on the ground that there was no final discussion among the judges constituting the Bench, before our respective judgments were written. If there were any force in this argument, all three 'judgments' would be null and void—inasmuch as Costello, J. is still a member of the court and may be able in future to come to India and deliver judgment in person. In my opinion, it is for each judge to decide for himself whether he has discussed the matter sufficiently, and if one judge chooses to express a final decision, his brother is not entitled to insist on further discussion with the object of persuading the former to change his mind. In my opinion, therefore, it was for our learned brother Costello, J. to decide for himself whether he was in a position to come to a final decision without further discussion, and if he has so decided, his decision cannot be questioned by us, his colleagues.

In the result, therefore, I hold that the judgment of Costello, J. which we are about to read is a valid judgment. If the conclusions arrived at in that judgment agree with those expressed by my learned brother Biswas, J., then, in my opinion, the appeal will stand dismissed. If, on the other hand, those conclusions agree with the conclusions expressed by me, the appeal will have to be allowed, and the suit dismissed.



MR JUSTICE COSTELLO

COSTELLO, J 'S JUDGMENT *

COSTELLO, J —This appeal arises out of a suit which, beyond doubt, is one of the most interesting and remarkable that ever came before a court of law in this country or indeed in any other. The strange and romantic story told by the plaintiff, the complexity and diversity of the facts which had to be investigated, the volume of the evidence, the number of witnesses examined, and the time occupied by the trial—all combined to make it a case which, it is no exaggeration to say, is unique in legal annals.

The learned judge at the outset of his judgment described the suit in the following words: "It is not outside judicial experience, nor is the suit unprecedented, but it is very extraordinary, and its gravity arises from the magnitude of the property at stake, and from certain personal relations it affects."

The appellants before us are three out of four persons who were the defendants in the court below, and they are Bibhabati Devi, Ram Narayan Roy and Ananda Kumari Devi.

The fourth defendant was Sarajubala Devi. She did not oppose the plaintiff's claim in the suit, but actually gave evidence on his behalf. Accordingly, she is not an appellant, but she was made a party to the appeal as a respondent. She did not appear, nor was she represented at the hearing before us.

The plaintiff described himself as Kumar Ramendra Narayan Roy, son of Raja Rajendra Narayan Roy of Jaidebpur in the District of Dacca, and the plaintiff claimed that he was entitled to an undivided one-third share in certain properties which for the purpose of this judgment may compendiously be called the Bhowal Raj. He prayed for a decree declaring him to be the said Kumar Ramendra Narayan Roy, and also prayed that his possession of the said share in the estate might be confirmed, or, in the alternative, if it were found that he was not in possession of it, that possession might be restored to him.

The defendants resisted the claim on the ground that Kumar Ramendra Narayan Roy was dead and that the plaintiff was an impostor.

The suit was instituted in the court of the subordinate judge of Dacca, and was originally described as Title Suit No 70 of 1930 of the First Court of the Subordinate Judge, but subsequently it was re-numbered as Title Suit No 5 of 1933 of the Fifth Court of the Subordinate Judge, and it ultimately came on for trial before Mr Pannalal Basu who had been selected from amongst the subordinate judges of the Province of Bengal to preside over this particular trial.

While the trial was still in progress, Mr Pannalal Basu was appointed to be an Additional District Judge of Dacca, and thereupon the hearing continued before him in that capacity and the suit became Title Suit No 38 of 1935 of the court of the First Additional District Judge of Dacca.

We mention these facts in order to make it clear as to how it came about that the exhibits in the case bear a variety of numbers.

* Read by Biswas, J on the 29th August, 1940

MAGNITUDE OF THE CASE

The trial began on the 27th November, 1933, and as the learned judge states, it continued from day to day except for holidays and for fifteen days on which the learned judge himself was otherwise occupied, or was unable to sit owing to personal indisposition or on account of some fortuitous event, such as the illness of a witness

The hearing lasted with these intermissions until the 20th May, 1936, and judgment was delivered on the 24th August, 1936. The total number of days of actual hearing amounted to no less than six hundred and eight

The number of witnesses called on behalf of plaintiff was 1042 and for the defendants 435, and in addition 27 witnesses on behalf of the plaintiff and 44 witnesses for the defendants were examined on commission on various dates before and during the course of the trial

The appeal was presented to this court on the 5th October, 1936, but owing to the magnitude of the record and despite the fact that the necessary books were prepared with all due diligence and despatch by a staff specially appointed for the purpose, the appeal was not made ready for hearing until after the Long Vacation in the year 1938. The hearing eventually began before us on the 14th November, 1938 and lasted for 164 days. The period of time occupied by the trial and by the appeal gives some indication of the wide range of the matters which had to be investigated

The learned judge in the early part of his judgment has gone into the history and given a description of the Bhowal Raj family in great detail, and has outlined the circumstances in which the family lived and their general environment. It is, therefore, not necessary that we should recapitulate any of these matters in this judgment. Without necessarily accepting the learned judge's findings on questions in regard to which there was controversy between the parties, such as the degree of education, the style of living and the attainments of the family, and in particular, those of the second Kumar himself, and also the learned judge's finding as to the personality of the second Kumar, the learned judge's description of the residences of the family and of the general topography of the neighbourhood may be taken as entirely accurate

HISTORY OF THE FAMILY

It is sufficient for us for the purpose of this judgment to state that Raja Rajendra Narayan Roy, Zemindar of Bhowal, was one of the largest landed proprietors of Eastern Bengal. The estate comprises large areas in the districts of Mymensingh and Dacca. The family seat was at Jaidebpur, situate about twenty miles to the north of the town of Dacca. The rent roll of the estate in the year 1931 was about six and a half lacs of rupees. Raja Rajendra Narayan Roy died on the 26th April, 1901, leaving a widow, three sons and three daughters. The widow was known as Rani Bilasmani. The sons were Ramendra Narayan Roy, Ramendra Narayan Roy and Rabindra Narayan Roy. They were commonly known as 'Bara Kumar' (eldest Kumar), 'Mejo Kumar' (second Kumar), and 'Chhoto Kumar' (youngest Kumar). The daughters were Indumoyee Devi, Jyotirmoyee Devi and Tarinmoyee Devi.

It appears that under the terms of a Deed of Trust and those of a Will executed by Raja Rajendra Narayan Roy, upon his death, his widow managed the estate until her own death which took place on the 21st January, 1907

After that the three sons became the owners of the estate in equal shares and managed the estate jointly. They continued to live as an undivided Hindu family, joint in mess, property and worship.

All the three sons had married before the death of their father, the eldest son Ranendra Narayan Roy had married in the year 1901 a lady named Sarajubala Devi, who is the second defendant in the suit. Ramendra Narayan Roy, the second son, had married in the year 1902 Bibhabati Devi, who is the first defendant in the suit, and in the year 1904 Rabindra Narayan Roy, the third son, had married Ananda Kumari Devi, the fourth defendant in the suit.

In the month of April in the year 1909 the second son, Ramendra Narayan Roy, accompanied by his wife Bibhabati Devi, and her brother Satyendranath Banerjee, with a staff of officers and servants, went from Jaidebpur on a visit to Darjeeling, and there occupied a house called "Step Aside".

It was in Darjeeling that there happened the events which have given rise to the present dispute. Ramendra Narayan Roy fell ill in the early hours of the 6th May, 1909, and after three days he was taken for dead, and in accordance with Hindu custom his body was removed from "Step Aside" for cremation. Thereafter, on the 10th May, 1909, Bibhabati Devi and the other members of the party left Darjeeling and returned to Jaidebpur where they arrived on the night of the 11th May, 1909.

The eldest son, Ranendra Narayan Roy, died in the year 1910 at the early age of twenty-eight, and the other son, Rabindra Narayan Roy, died in the year 1913, when he was only twenty-seven years of age.

None of the three sons had any children except the eldest, Ranendra Narayan Roy, who had had a son who died in infancy before the death of the father.

Each of the three wives--Bibhabati Devi, Sarajubala Devi and Ananda Kumari Devi took possession as a Hindu widow of her husband's share in the estate in the usual course of events.

In the year 1919 the widow of the youngest son, Ananda Kumari Devi, took in adoption her own brother's son who is Ram Narayan Roy, the third defendant in the suit.

It appears that in the year 1911 the Court of Wards had taken charge of the shares of Bibhabati Devi and Rabindra Narayan Roy, the third son, after declaring them "disqualified proprietors". The Court of Wards also took over charge of Sarajubala Devi's share in the following year.

In the year 1919, however, in view of the adoption of Ram Narayan Roy by Ananda Kumari Devi, the Court of Wards released her share for the time being, but contemporaneously with the adoption there had been an agreement by and under which Ananda Kumari Devi retained a portion of the one-third share of her husband, the remainder vesting in the adopted son. After the adoption the Court of Wards declared the adopted son a "disqualified proprietor" and took over his share, and in respect of the portion retained by Ananda Kumari Devi, an agreement was come to whereby the management of this portion was entrusted to the Manager of the Court of Wards under the terms of an indenture dated the 29th April, 1919, and a power of attorney of the same year executed by the lady in favour of one Needham, the then Manager. The result was that, in effect, the Court of Wards was actually in possession and control of the entire Bhowal Estate, though they were managing Ananda Kumari Devi's portion as her agent.

In the month of May in the year 1932, that is to say, at a time when the present suit had already been instituted, Ananda Kumari Devi was herself declared a "disqualified proprietor" Thus it was that at the date of the suit Ananda Kumari Devi was not a disqualified proprietor This explains why she was sued in her own name and how it came about that she personally signed her written statement

In the appeal before us all the appellants as well as the respondent Sarajubala Devi were represented by the Manager of the Court of Wards Bibhabati Devi, however, also appears as an appellant in her individual capacity

By the time the suit was begun none of the ladies were residing in Jaidebpur Bibhabati Devi had left there in the year 1909, and some time later, came to live in Calcutta with her brother, Satyendranath Banerjee

The eldest Kumar's widow, Sarajubala Devi, left Jaidebpur shortly after her husband's death in the year 1910 and has ever since been residing in Calcutta

As regards Ananda Kumari Devi, she was at Dacca at the time of her husband's death in the year 1913, but she left Dacca shortly thereafter, though she ultimately returned to Dacca and took up residence there

In the month of December of the year 1920 or in January, 1921 there occurred an event which was destined seriously to disturb the normal course of the hitherto placid lives of the members of the Bhowal Raj family There appeared in the town of Dacca a sannyasi, naked, except for a loin cloth, smeared with ashes and having a long beard and matted hair falling in strands behind his back

That sannyasi is the plaintiff in the suit

PLAINTIFF'S CASE IN PLAINT

The plaintiff's case, as set out in the plaint which was in the Bengali language, was that "In the month of April, 1909 last the plaintiff accompanied by his wife, defendant No 1, Sm Bibhabati Devi and some other relations and officers went to Darjeeling hill station for a change During his stay at Darjeeling the plaintiff fell ill, and while he lay unconscious by the administering of poison in the course of his treatment, he being taken for dead was carried to the cremation ground (*sasan*) on the night of the 8th May, 1909 After the dead body had been taken to the burning ground, there was severe storm and rain, and the persons who carried the body of the plaintiff, after leaving the body on the *sasan* (burning ground), took shelter elsewhere Afterwards when they returned they did not find the body of the plaintiff in the burning ground and went away A few days after the occurrence, the plaintiff having regained consciousness found himself amongst the *naga sannyasis* (nude mendicants), and he having recovered to some extent by the tending and nursing of those sannyasis, began to live with them At that time, as the result of the administering of poison, his memory of the past was almost effaced He began to wander about from one country to another with the sannyasis as one of their party At that time the plaintiff having become accustomed to the life of a sannyasi (mendicant) became indifferent to the world

"Taking advantage of the absence of the plaintiff, the wife of the plaintiff, defendant No 1, Srimati Bibhabati Devi, on the allegation that the plaintiff

was dead, began to enjoy the plaintiff's share in the zemindary, etc, according to the provisions of the Hindu Law " The plaintiff describes that the enjoyment, in the above manner, by the defendant No 1, will be regarded as possession by the plaintiff during his life time Afterwards the Court of Wards took charge of the plaintiff's share on the 28th of April, 1911, on declaring the defendant No 1 as a 'disqualified proprietress'

"In the beginning of the year 1921 last the plaintiff in the course of his wanderings in the aforesaid manner came to Dacca town and began to stay at the Buckland Bund in the garb of a sannyasi During his stay there many recognised and guessed the plaintiff as the second Kumar of Bhowal, and later on, the relations of the plaintiff and the local zemundars positively knowing the plaintiff as the second Kumar of Bhowal pressed the plaintiff to disclose his identity At that the plaintiff being unable to conceal his identity disclosed it, and his relations induced him to return to worldly affairs, and the tenants of the above Bhowal Raj, admitting the plaintiff as the second Kumar of Bhowal, began to pay rents and premium (*nazar*) to him After that a large meeting was held at Jaidebpur on the 16th May, 1921, and the plaintiff's relations and tenants acknowledged him as the second Kumar Ramendra Narayan Roy, and the tenants began to pay like before, openly and publicly, rents and *nazars* (premiums) to him "

The plaintiff further said that there having been impediment and obstruction to the realisation of rent on the part of the Court of Wards on account of the collection of rent and premiums in respect of his share by the plaintiff, the Collector of Dacca, as the result of a conspiracy on the part of Bibhabati Devi with her brother and at their instigation, published on the 3rd June, 1921, a "Declaration" to the effect that the plaintiff was an impostor and that anyone who paid rent or subscription to him would do so at his own risk

On the 8th December, 1926, the plaintiff presented a memorial to the Board of Revenue, praying that the Board would be pleased to direct an open enquiry as to his identity and to direct the withdrawal of the declaration of the 3rd June, 1921, or to make any other order which to the Board might seem fit and proper

This memorial was considered by the then member of the Board of Revenue and was rejected by him on the 30th March, 1927

In the plaint the plaintiff refers to an order which was made in the month of April, 1929, under section 144 of the Code of Criminal Procedure which was served upon him, and in which he was described as Sunder Das alias Bhowal sannyasi This notice forbade him to enter the "jurisdiction of Jaidebpur Police Station" The plaintiff stated that although this order was never made absolute, he did apprehend that, if he went to Jaidebpur there would be interference with him

The plaint goes on to state that the plaintiff was in possession of the estate by reason of receipt of rents, and that Bibhabati Devi and on her behalf the manager of the Court of Wards had been executing illegal certificates against the tenants, but that nevertheless the plaintiff's possession remained intact

In paragraph 10 of the plaint the plaintiff asserted that his wife prompted by evil counsels and by love of gain had been denying his identity without seeing him at all, and that she had been adopting various means to interfere with his possession of the estate The plaintiff further stated that the defendant Sarajubala Devi had personally acknowledged his identity, but the

manager of the Court of Wards who was in charge of her share of the estate was hostile, and the plaintiff inferred the same hostility in the defendants Ram Narayan Roy and Ananda Kumari Devi from their conduct, although they had not openly denied his identity

With regard to the defendant Ram Narayan Roy, the son adopted by Ananda Kumari Devi, the plaintiff stated that he did not know whether the adoption was valid, but that as Ram Narayan Roy was in possession of a portion of the estate, he had been made a party

DEFENCE OF BIBHABATI DEVI IN HER PLEADING

In answer to the plaint two written statements were put in—one on behalf of the defendants Bibhabati Devi and Ram Narayan Roy jointly, and the other by the defendant Ananda Kumari Devi. The defendant Sarajubala Devi did not put in any written statement. The written statement of the defendants Bibhabati Devi and Ram Narayan Roy was in English, and was verified by the manager of the Court of Wards, and not by these defendants personally

In this written statement the answer made to the plaint, broadly stated, is that Ramendra Narayan Roy died in Darjeeling at about midnight on the 8th May, 1909, following an acute attack of biliary colic, and that on the following morning his dead body was taken out in procession to the local cremation ground, and was there burnt to ashes

It was further pleaded in this written statement that the plaintiff is not a Bengalee—much less a member of the Bhowal Raj family, that he never knew the Bengali language, and even at the time of the filing of the written statement, after a strenuous effort for nearly ten years, following the year 1921, and “with the assiduous endeavour of a number of designing persons who have set him up for their own interest and have now got this suit filed in his name, has not been able to learn the Bengali language, or to talk properly in that language like a Bengalee”

Paragraph 17 of this written statement is in the following terms “That in 1910 the eldest Kumar died, followed by the death of the youngest Kumar in 1913. The Court of Wards has since been in charge of the entire estate of the three widows until 1919, when the share of the youngest lady has been released by the Court of Wards, but it is still managed by its manager jointly with others under the Court of Wards. The sisters of the Kumars and the nephews, along with other relations and dependants, lived in the Raj palace at Jadebpur as members of the Raj family till about 1914, and their expenses used to be borne by the estate up till that time. These advantages were discontinued with the result that all of them had to shift for themselves, the sisters being allowed only a monthly allowance of Rs 200/- each according to the provisions contained in the will of the late Raja Rajendra Narayan Roy. Certain compassionate allowances and pittances that used to be paid during the time of the Raja and of the Kumars to poor and distant relations, and other dependants of the Raj family, were in most cases stopped, and in other cases greatly reduced. In short, the Court of Wards had to withdraw all allowances, pittances and other advantages not provided for in the Trust Deed or the Will left by Raja Rajendra Narayan Roy, with the result that the administration of the estate by the Court of Wards became greatly unpopular with most of the relations and dependants of the Kumars. Besides, there had been several disputes and litigations between the Court of Wards and

the sisters of the Kumars relating to extensive Zemindari, properties, and a portion of the ancestral homestead of the Kumars and other matters"

Paragraph 18 sets out that the tenants of the Bhowal estate had come to dislike the administration of the Court of Wards, "on account of the enforcement of the certificate procedure, and other rules of collection and management strictly according to the Court of Wards Manual"

The written statement further contains a plea that the plaintiff had been set up as the second Kumar of Bhowal by some designing persons

The written statement contains a general traverse of the whole of the case as made in the plaint, and the defendant Bibhabati Devi asserted that she was present at the death of her husband and that "she has and can have no doubt in her mind even after having seen him several times in Calcutta that the plaintiff is an impostor"

ANANDA KUMARI DEVI'S CASE

The written statement of Ananda Kumari Devi was in Bengali, but is much on the same lines as the other one. It states in terms that "the plaintiff is not and can never be the second Kumar of Bhowal, but is an impostor"

The pleading makes the specific case that the sisters of the three Kumars, their nephews, and the step-sons of Kripamoyee (the Kumars' father's sister) had, with the help and advice of some people, set up a sannyasi, an inhabitant of the Punjab, as the second Kumar, having brought him under their control by means of bribes and various other allurements. These pleas are contained in paragraph 10 which, in effect, is an elaboration and extension of the matters dealt with in paragraphs 17 and 18 of the other written statement

Ananda Kumari declared that the present suit was based on malice and conspiracy

In addition to the matters already mentioned, it is pleaded in one or other of the written statements that as a matter of law, the plaintiff having on his own admission become an ascetic, and having relinquished the world, had lost all his rights, and was not entitled to claim any of the reliefs he was seeking in the suit, and that in any event the suit was barred by limitation. There was a further plea that the suit was also barred by reason of the provisions of section 42 of the Specific Relief Act

AMENDMENT OF THE PLAINT

It is to be noticed that in the plaint in its original form the plaintiff asked that it might be declared that he was Kumar Ramendra Narayan Roy, the second son of the late Raja Rajendra Narayan Roy of Bhowal, and that a permanent injunction might be issued upon the defendant Bibhabati Devi, restraining her from causing obstruction in any way to the plaintiff's possession of the one-third share of the entire Bhowal Raj estate, consisting of the properties left by the late Raja Rajendra Narayan Roy and those that had been acquired subsequently. Having regard to the fact, however, that the defendants in their written statements had denied *inter alia* the possession of the plaintiff and had contended that the suit was barred by limitation, the plaintiff on the 19th February, 1931, made an application to the court for amendment of the plaint by the addition of a prayer for confirmation of his

possession, or, in the event of his being found not to have been in possession, for recovery of possession. As a result of that application, an order was made on the 15th April, 1931, allowing the amendment asked for.

The plaint was accordingly amended, and in its final shape contains an additional prayer asking that "the plaintiff's possession may be confirmed in respect of the one-third share of the properties described in the Schedule below, or if from the evidence and under the circumstances plaintiff's possession thereof is not established, then possession thereof may be given to the plaintiff, and in such circumstances additional court-fees may be taken from the plaintiff, and decree may be passed accordingly"

In consequence of the amendment of the plaint, the defendants Bibhabati Devi and Ram Narayan Roy put in an additional written statement by which they objected to the amendment, and reiterated their plea that as the plaintiff had renounced the world and retired from all worldly interests, entered a religious order and had become "a perfect sannyasi", after having performed all the necessary religious rites and ceremonies of a sannyasi more than twelve years previously, and as he had led the life of a sannyasi, his claim to the estate was not maintainable. The amendment above-mentioned, and certain other amendments to the plaint which it is not necessary to discuss are printed in red ink in the record.

ISSUES IN THE CASE

It is to be observed that the issue raising the question whether the suit was barred under the provisions of section 42 of the Specific Relief Act was not argued in the court below, and the learned judge disposed of it by saying that the suit was not a declaratory suit, and so section 42 did not raise a bar.

As regards the plea in bar which may succinctly be described as "Civil Death", this may be disposed of in a few words and at once by saying that no serious attempt was made on the part of the defendants to support this plea or to place before the court any facts sufficiently definite in character to substantiate it. In our opinion, therefore, it was of no avail to the defendants, and may be disregarded altogether.

The only point of law, therefore, which might require consideration is the plea of Limitation.

The questions of fact which had to be decided in the suit resolved themselves into one comprehensive question, namely, whether the plaintiff is the second Kumar of Bhowal or not.

The learned judge characterised this issue as "short and simple", and no doubt, in a sense, that is an accurate description, but although the issue is easy to state, it is by no means easy of solution owing to the nature and extent of the factors which had to be taken into consideration.

We have already set out the contentions of the parties as outlined in the pleadings. But we think it is desirable to give a brief account of the case as made at the trial on behalf of the plaintiff and of the defendants, respectively.

PLAINTIFF'S CASE AS MADE AT THE TRIAL

To deal first of all with the plaintiff's story. At the time when Ramendra Narayan Roy went to Darjeeling in the month of May in the year 1909, he

was suffering from syphilis. In Darjeeling he stayed at a house called "Step Aside." This house had been engaged in advance for a period from the middle of April to the end of June for the occupation of Ramendra Narayan Roy by his brother-in-law, Satyendra Nath Banerjee, and Ramendra Narayan Roy's Secretary, a man of the name of Mukunda Guin. The party which accompanied Ramendra Narayan Roy consisted in all of about two dozen persons, and their names are set out in the judgment.

HAPPENINGS AT DARJEELING

Ramendra Narayan Roy with his party left Jaidebpur on the 18th April, 1909, and arrived at Darjeeling two days later. About a fortnight after that, to be exact, in the small hours of the 6th May, 1909, Ramendra Narayan Roy fell ill. On the 8th May, 1909, between the hours of seven and eight o'clock in the evening, he passed into a state of apparent death as a result of the administration to him by his own private physician Dr. Ashutosh Das Gupta of a poison which produced all the symptoms of arsenical poisoning. The apparently dead body was taken out from "Step Aside" and carried in a procession to the local cremation ground for cremation some two or three hours later. The story proceeds that after the arrival of the procession at the cremation ground and before the funeral pyre could be lighted, a storm and heavy rain came on which was so violent that all the persons who had accompanied the body fled away and took shelter in various structures in the neighbourhood, leaving the body where it was. Whilst the body was lying unattended, the downpour of rain had the effect of reviving Ramendra Narayan Roy and he began to groan. The sounds made by him reached the ears of a party of four sannyasis who had some time before taken up their quarters in a sort of cave situated within a short distance from the cremation ground. Hearing the cries of distress, the sannyasis emerged from their cave and made their way to the spot where the body of Ramendra Narayan Roy was lying on a *khat*. The sannyasis untied the cords by which the body had been secured to the *khat*, removed coverings from the body and carried it to a hut situated at some distance down-hill from the cremation ground. When eventually, after about an hour or so had elapsed, the cremation party returned to the place where they had left the body, they found it gone.

By reason of the ministrations of the sannyasis, Ramendra Narayan Roy after a few days recovered consciousness, and after a lapse of about a fortnight, during which time the party had moved and lodged themselves in another hut still further down the hill-side, Ramendra Narayan Roy had recovered sufficiently to make it possible for the sannyasis to take him away with them from Darjeeling. But although Ramendra Narayan Roy had recovered in body, his mind remained affected, and was to all intents and purposes a complete blank. He had no knowledge of who he was, nor any recollection of his previous life and circumstances. In this condition, according to his own account, he wandered from place to place in various parts of India in the company of the sannyasis and adopted in all respects their habits and mode of living. In this manner, Ramendra Narayan Roy continued wandering about, until several years later, whilst at a place called Braha Chhatra, his memory cleared to some extent, and he was able to remember that his original home was at Dacca, and then, after travelling alone by a devious route for about twelve months longer, he eventually arrived in that town.

The persons who had accompanied Ramendra Narayan Roy to Darjeeling left there on the 10th May, 1909, and arrived back at Jaidebpur at a late hour on the following day.

INTERVENING YEARS AT JAIDEBPUR

During the course of the intervening years various events of some importance in the story had been taking place in Jaidebpur. The plaintiff says that almost immediately after the party returned from Darjeeling, there was considerable talk to the effect that the body of Ramendra Narayan Roy had not, in fact, been cremated at all. This talk developed into a rumour which eventually reached the ears of members of the Bhowal family, with the result that a discussion took place amongst some of them as to whether it was fitting in the circumstances that the usual *sradh* should be held without there first of all being a ceremony of the kind known as *kushaputtalika*, which consists of the burning of an effigy made of *kusha grass*. But in the end this idea was discarded, and a *sradh* in the ordinary form was held on the eleventh day after the supposed death, that is to say, on the 18th May, 1909.

RUMOURS

The rumour, in the course of the ensuing months, became more comprehensive, and according to the plaintiff's story, after the lapse of some four months or so, it developed into a suggestion that not only was the body of Ramendra Narayan Roy not cremated, but that the man himself was living and was wandering with sannyasis. This rumour, it is said, became current all over the Bhowal district and even in other parts of Bengal.

The rumour that the Kumar Ramendra Narayan Roy was actually living and was wandering with sannyasis arose out of a visit made by a certain sannyasi to the private temple—known as Madhab Bari—attached to the Bhowal family mansion in Jaidebpur. This sannyasi is said to have narrated to Satinath Banerjee, otherwise known as Sagar, the son-in-law of Ramendra Narayan Roy's sister, Jyotirmoyee Devi, a story to the effect that this sannyasi himself had seen a Bengalee rich man's son roaming as a sannyasi, and had heard that he had been found in Darjeeling. It is said that in consequence of this conversation, at some time or other, though the exact date was never very exactly specified, one Akshoy Roy, an agnatic relation of the family, undertook, at the instance of Ramendra Narayan Roy, the eldest son of the family, a journey to Darjeeling, and to various places in the northern parts of India, for the purpose of making enquiries and investigating the truth of the subject matter of the rumour. It is not clear what, if anything, resulted from this quest, but it is said that Kripamoyee Devi (the maternal aunt of Ramendra Narayan Roy), who had gone shortly after the death of Rabindra Narayan Roy in the year 1913 to pass the rest of her days in Benares, made a practice of seeking out and interrogating as many sannyasis as possible with a view to obtaining information with regard to the fate of her nephew. At her instigation Satinath Banerjee also undertook various journeys for the purpose of making similar enquiries.

The plaintiff made the case that the rumours above-mentioned continued, until in the year 1917 they were intensified in consequence of the arrival in Jaidebpur, in that year of a *moun* sannyasi, that is to say, a sannyasi under a vow of silence, who, while he was in Jaidebpur, made a communication to Jyotirmoyee Devi regarding Ramendra Narayan Roy, which she says "filled us with joy."

RANI SATYABHAMA'S LETTER TO MAHARAJA OF BURDWAN

An outstanding consequence of the visit of this *mouni* sannyasi was that Satyabhama Devi, grandmother of Ramendra Narayan Roy, wrote a letter which was dated the 3rd September, 1917, to the Maharajadhiraj of Burdwan, in which she stated that "there is a rumour for about two months in this place to this effect —The second Kumar Bahadur of Bhowal is alive After his death, his body was taken to a cave, for performing funeral rites Owing to, a great storm and heavy shower setting in at that time, they put fire to his mouth and left the body at that place without burning the same Then an ascetic came with his followers, took him away and made him alive Now it is reported that he has become a recluse and is living with him He does not want to enter into worldly affairs any more I have not yet come to know definitely where he really is Many people speak of many places Such a rumour is afloat in different districts, such as, Dacca, Faridpur, Barisal, Mymensingh, Rangpur, Dinajpur, Comilla, etc Many people are daily wanting to know informations from me regarding this matter I have not yet been able to decide one way or the other I have come to know from those who went to Darjeeling with the late second Kumar that you too were at Darjeeling at the time of the death of the second Kumar Informations were sent to you after his death, it is said that you arranged for the *tulsi* leaves and the Ganges water"

The purpose of this letter was to enquire whether the incidents mentioned in the letter were true or not, or "whether the body of the second Kumar was in fact burnt"

In answer, the Maharajadhiraj of Burdwan wrote a letter, dated the 20th September, 1917, in which he said that he was "staying at Darjeeling when this calamitous event happened there I also recollect that some persons came to my local Superintendent and gave him this information, and it was from him that I heard that the Kumar Ramendra Narayan Roy of Bhowal had died Thereafter,—whether it was in the morning or in the evening I do not exactly remember,—I saw an assemblage of men at the place where dead bodies are burnt at Darjeeling, and having enquired who had died, I was told in reply that the said Kumar of Bhowal had died, and that it was his dead body that was being burnt"

This letter, for some obscure reason, was not made an exhibit at the trial, but by consent of both parties before us in the appeal, a copy of it, which had been retained in the Burdwan Rajbati, was put in evidence and marked as an exhibit

At the trial a much later letter of the Maharajadhiraj of Burdwan, namely, one dated the 16th May, 1921, was put in evidence on behalf of the plaintiff This letter was apparently not written in answer to any letter sent to the Maharajadhiraj of Burdwan, and the circumstances which brought about the writing of it are not altogether clear It may be necessary to refer to this letter later

It was a definite element in the plaintiff's case that rumours as to the existence of Ramendra Narayan Roy were current from almost immediately after the events in Darjeeling, and that these rumours persisted down to the year 1921, when the plaintiff appeared on the scene in Dacca

PLAINTIFF'S ARRIVAL AT DACCA

The exact date on which the plaintiff arrived in Dacca is not known The plaintiff himself was not able to specify it But, as already stated, it was

approximately at the end of the year 1920 The plaintiff's own account as to how it came about that he found himself in Dacca is that, having recollected at Braha Chhatra that his home was at Dacca, though not who he was, while he was still in the company of the sannyasis including his *guru* Dharam Das, he was directed by the latter to go home, and he was told that after going home 'if he could overcome *maya*, that is to say, love of the world, he could come back after a year, and would find Dharam Das waiting for him at a place called Hardwar, and he would then be duly initiated into *sannyas* The plaintiff parted company with the sannyasis at Braha Chhatra and set out alone, and after passing through various places, he eventually arrived by tram at Dacca late at night, and stayed in the railway station there until the following morning In the morning, he made his way to the *sudder ghat* on the banks of the river Buriganga, crossed from there to a *chun* on the far side of the river then returned again, and seated himself on the Buckland Bund in front of the gate of a house which was referred to in the evidence as Rup Babu's house There he remained day and night, completely oblivious of all weather conditions for some four months He had all the outward appearances of a *sannyasi* He was naked except for a *length*, *i.e.*, a loin cloth He had a long beard, and his hair matted into a mass of cords fell behind his back reaching down to his knees His body was besmeared from head to foot with ashes In front of him was a *Dhum*, that is to say, an incense burner

VISIT TO KASIMPUR AND THENCE TO JAIDEBPUR

According to the plaintiff's own account, whilst on the Buckland Bund, he recognised some of the persons passing to and fro and even recollected their names Gradually he remembered that he belonged "to these parts", and even whilst still on that spot, he recollected that he was the second Kumar of Bhowal During the time that the plaintiff was at the Buckland Bund, whenever he was spoken to, he replied in the Hindi language On or about the 5th April, 1921, the plaintiff was taken to a place called Kasimpur, situated at a distance of a few miles to the north-west of Jaidebpur The plaintiff's case is that he was taken there by Atul Prosad Roy Chowdhury, a zemindar of Kasimpur This gentleman was an old friend of the Bhowal family. The plaintiff gives as the explanation of why he went to Kasimpur, that Atul Prosad Roy Chowdhury took him to Kasimpur, because the latter suspected that the plaintiff was the second Kumar of Bhowal The plaintiff remained at Kasimpur some five or six days, and was then sent to Jaidebpur on an elephant He arrived there one day about the middle of April, 1921, in the early evening He dismounted at the Bhowal Rajbari and took up a position on the *posta* (brick-built platform) under a *Kaimun* tree at Madhab Bari already mentioned, and there he stayed throughout the night of his arrival, the next day and the day after that until the afternoon According to him he was suspected by more than one person of being the second Kumar

AT JYOTIRMOYEE DEVI'S HOUSE

While the plaintiff was at Jaidebpur, Jyotirmoyee Devi, the sister of the second Kumar of Bhowal, having heard of his arrival, sent her son to fetch him to her house This was on the day after his arrival In response to this

summons the plaintiff went to the house of Jyotirmoyee Devi which she had built for herself, in the year 1914. It was situated at a little distance to the south-east of the *Raybari* in a district known as *Chakkar*. Satyabhama Devi, the grandmother of the second Kumar, was present in the house at the time, and also some of the other relatives of Jyotirmoyee Devi. Some conversation took place between Jyotirmoyee Devi and the plaintiff, and his manner of speaking and looking at people as well as his general appearance, and in addition, his gait, aroused her suspicions. Accordingly, after the plaintiff had left, and had returned to the Madhab Bari at the family mansion, Jyotirmoyee Devi made up her mind to invite him to a meal on the following day in order that she might have the opportunity of viewing him in a better light. Accordingly, the same evening she sent one of her officers, Jitendra Bhattacharjee, to invite him to come. On the next morning, Jyotirmoyee Devi's son, Budhu, went to fetch the plaintiff, but he did not immediately come, but came at about midday. The plaintiff stayed on in Jyotirmoyee Devi's house until about four o'clock that same afternoon, and while he was in the house, there occurred a somewhat dramatic scene which served to strengthen the impression that had already been made on the mind of Jyotirmoyee Devi and others present that the plaintiff might be Ramendra Narayan Roy.

When the plaintiff went away from Jyotirmoyee Devi's house, he was driven in a tum-tum belonging to Budhu to the local railway station, and thence he departed for Chandranath, a shrine in the district of Chittagong. He returned, however, from there to Dacca after a short time, and again resumed his life on the Buckland Bund. This was about the 20th April, 1921.

VISIT TO SAIBALINI DEVI'S HOUSE AT DACCA

Within a few days after this, Jyotirmoyee Devi sent her son, Budhu, and her officer, Jitendra Bhattacharjee, from Jaidebpur to Dacca for the purpose of bringing the plaintiff to Jaidebpur, but on that occasion they were unable to induce him to come. Jyotirmoyee Devi accordingly came to Dacca herself, and put up at a house belonging to the husband of her sister, Tarinmoyee Devi. She went there, because she wished to show the plaintiff to her sister. But it appears that the husband of Tarinmoyee Devi, Brajalal Mukherjee, objected to having the sannyasi in his house, so Jyotirmoyee Devi was forced to arrange with her son to have the plaintiff taken to the house of a lady named Saibalini Devi, a second cousin of Jyotirmoyee Devi and of Ramendra Narayan Roy. A son of Saibalini Devi together with Budhu and Jitendra Bhattacharjee went to fetch the plaintiff, and they brought him to the house of Saibalini Devi, and there he was seen by a number of ladies who were relatives or connections of the family, and, in particular, by Kamal Kamini Devi, an aunt of Saibalini Devi. Kamal Kamini Devi, so it is said, also suspected that the plaintiff might be the second Kumar of Bhowal. At the time of this visit, the plaintiff was still in his usual garb of a sannyasi, with a loin cloth, long matted hair, and a beard. He remained in the house for half an hour or so, and then returned to his pitch on the Buckland Bund.

BACK TO JYOTIRMOYEE DEVI'S HOUSE

Some days later, that is to say, on the 30th April, the plaintiff went to Jaidebpur to the house of Jyotirmoyee Devi. How he came to be there is

not very clear, but it seems that he must have been sent for by Jyotirmoyee Devi herself, because she desired to have another look at him. This brings us to a vital part of the plaintiff's story.

The plaintiff arrived at Jyotirmoyee Devi's house about seven or half past seven o'clock in the evening. He was given a seat in the "*Bartakkhana*" in which room at the time there were present Atul Prosad Roy Chowdhuri (otherwise known as Bhulu), Jyotirmoyee Devi's officer Jitendra Bhattacharjee, an officer of Bhulu's, and some of the local residents who were in the habit of coming to play cards with Budhu, Jyotirmoyee Devi's son. Jyotirmoyee Devi herself was in an adjoining room, but through a doorway she observed the sannyasi looking at some photographs of the members of the Bhowal family and weeping.

It appears that on that evening no one had any conversation with the sannyasi. On the following day, that is to say, the 1st May, the plaintiff went in the early morning to bathe in the river Chillai which flows alongside the Bhowal family mansion. After the bath the sannyasi returned to the house smeared with ashes as usual. The only incidents of any importance on that day were, according to the plaintiff's story, that he said in Hindi to Jogendra Nath Banerjee, the Secretary to the Bhowal Raj, "*clean my Bartakkhana*", an instruction which tended to increase the general suspicion as to the man's real identity. About the same time Jyotirmoyee Devi told the plaintiff not to smear his body with ashes in future. This she did in order the better to see the complexion of the plaintiff.

On the 2nd May, as far as one knows, nothing of any particular importance happened except that Jyotirmoyee Devi remonstrated with the plaintiff, because he had not complied with her demand or request that he should not put ashes on his body, and she once more requested him not to do so on the morrow.

On the next morning when the plaintiff went to bathe, he was accompanied by one of the family servants, and a man called Nagendra Kumar Bhattacharjee, apparently in order that they might ensure that he would carry out Jyotirmoyee Devi's behest. At any rate, on that occasion he did come back from the river without ashes on his body, thus enabling those in the house to see the natural shade of his skin. The result was that not only Jyotirmoyee Devi but the other relatives, including the grandmother Satyabhama Devi, recognised the plaintiff as Ramendra Narayan Roy. On that occasion there were also present a large number of the tenants of the estate. On the same day, Jyotirmoyee Devi endeavoured to induce the plaintiff to allow her son to examine the body of the plaintiff to see whether he possessed marks on his body which would correspond with those known to have existed on the body of the second Kumar of Bhowal, but at the time the plaintiff would not permit this to be done.

EXAMINATION OF MARKS

We now come to a day which may be described as a landmark in the history of the plaintiff's case. On the 4th May, the plaintiff yielded to Jyotirmoyee Devi's wishes and suffered Budhu (Jyotirmoyee Devi's son) to look for marks. This took place at about seven o'clock in the morning at a time when no outsiders were present, and it is said that the result of the examination which was made was that Jyotirmoyee Devi was able to say to the plaintiff, "Your marks and appearance are like those of my second

brother You must be he Declare your identity" The plaintiff, however, repudiated the suggestion, and in the words of Jyotirmoyee Devi herself, he said, "No, no, I am not" Jyotirmoyee Devi in spite of this told her son to inform all the people, who had come to the house, that the marks of the second Kumar's body were on the plaintiff The son and nephew of Jyotirmoyee Devi thereupon told the persons present what Jyotirmoyee Devi had asked them to say

DECLARATION OF IDENTITY

The plaintiff later in the day took a seat out in the open amongst the assembled tenants, and these insisted upon his telling them who he was This he eventually did in the afternoon Before this happened, however, Jyotirmoyee Devi had threatened that she would not take any food unless and until the plaintiff avowed his identity At the time when the plaintiff disclosed his identity as Ramendra Narayan Roy, as Jyotirmoyee Devi relates, he was already sitting outside the house in an open space which was part of the premises The story is that somebody enquired, "What is your name?", to which the plaintiff replied, "Ramendra Narayan Roy Chaudhuri" He was then asked what was his father's name, and he said, "Raja Rajendra Narayan Roy Chaudhuri" Then his mother's name, and he replied, "Rani Bilasmani Devi" These questions were put by some person or other in the crowd round about the plaintiff, and after he had given these answers, a voice said, "Everybody knows the name of the Raja and Rani, who brought you up?" and in answer to this question the plaintiff said, "Aloka" Then the assembled people cried out, "*Madhyam Kumarer Jay*", and many of the women present shouted their "*jokar*", that is to say, the sound "*ulu ulu*" used by Hindu ladies on festive occasions

At this point, according to the plaintiff's own evidence, he "fell down in something like a fit I was in that condition for ten or twelve minutes" It appears that a very large number of people had by that time collected together around him The plaintiff was attended to by Jyotirmoyee Devi and another lady, whose name is Magnabala Devi When the plaintiff had sufficiently recovered, he was taken to the house of Jyotirmoyee Devi's sister, Tarinmoyee Devi, close by, in order that he might be away from the crowd This in brief represents the account given in the evidence of the plaintiff himself and that of Jyotirmoyee Devi of the "Declaration of Identity" referred to in the case from time to time as the "*atma-parichay*"

It is a point in the plaintiff's case that Jogendra Nath Banerjee, the Secretary of the Bhowal Estate, was present on this occasion, and that in the beginning he as well as the members of the family was amongst the number of those who recognised the plaintiff as the second Kumar of Bhowal On the same day Jitendra Mukherjee (Biloo), a son of the eldest sister, Indumoyee Devi, set off for Dacca to inform the relations there about the plaintiff's declaration of identity

NEEDHAM'S REPORT TO LINDSAY

On the following morning, namely, that of the 5th May, 1921, Jogendra Nath Banerjee and the Assistant Manager of the estate, Mohini Mohan Chakravarty, made a draft of a letter for F W Needham, the Manager of

the estate. The letter was signed by him and then sent to J. H. Lindsay, who was then the Collector of Dacca. A copy of this letter was sent to the defendant Bibhabati Devi, and also to the widows of the other two Kumars.

ALLEGED REPORT BY SHERIDAN

It was stated on behalf of the plaintiff that somewhere about the 9th May, 1921, a police officer named Sheridan had an interview with the plaintiff at Jyotirmoyee Devi's house at Jaidebpur, and that there he compared the features of the plaintiff with those in a photograph of the second Kumar of Bhowal, and also asked him certain questions with regard to tiger shooting and guns generally, all of which questions the plaintiff answered to Sheridan's satisfaction. This police officer also put into the hands of the plaintiff a No. 12 double-barrelled breech-loading gun in order to test whether the plaintiff knew how to handle the gun and how to take it to pieces and put it together again. It is said that the plaintiff satisfactorily acquitted himself of this test also. In the course of the present proceedings the plaintiff called for the production of any report which might have been made by the police officer concerned, but no such report was ever produced, and it is not at all clear whether the defendants ever admitted that the interview took place at all.

BIG MEETING ON 15th MAY, 1921 AND AFTER

From the 4th May until the 15th May crowds of people were daily coming to see the plaintiff, and he was receiving presents from them upon the footing that he was indeed the second Kumar of Bhowal, and then on the latter of these dates there took place a large meeting which was held on the open ground in front of the Rajbari at Jaidebpur. This meeting was presided over by one Adi Nath Chakravarty, a taluqdar of a place called Barisaba. The plaintiff and Jyotirmoyee Devi's son Budhu arrived at the meeting mounted on an elephant and rode round the outskirts of the assembly, and during the progress in this fashion he was acclaimed by the crowd as the second Kumar of Bhowal. After the meeting the plaintiff stayed on in Jyotirmoyee Devi's house for several days, and during that time the coming of many visitors continued. Shortly after this, an association was formed called the Bhowal Taluqdar and Proja Samiti for the purpose of raising funds with a view "to establish the Kumar in the legal position by legal means." There was a taluqdar of Bhowal named Digendra Narayan Ghose, and he became the President of this Association and one of the strongest supporters of the plaintiff. On the 18th May the youngest sister, Tarinmoyee Devi, came over from Dacca to Jyotirmoyee Devi's house, and it is said that she in her turn recognised the plaintiff. Presumably as an outcome of this visit, on the 23rd May, 1921, a joint petition on the part of Jyotirmoyee Devi, Tarinmoyee Devi and Govinda Mukherjee (the husband of Jyotirmoyee Devi's eldest sister, Indumoyee Devi) was sent to the District Officer at Dacca asking that there should be an enquiry into the plaintiff's identity.

PLAINTIFF'S INTERVIEW WITH LINDSAY

On the 29th May, 1921, there occurred an event of considerable importance. The plaintiff himself went with two lawyers named Sarat Chandra Chakravarty

and Pyari Lal Ghose to have a talk with J H Lindsay, the Collector of Dacca. What transpired at the interview is a matter of dispute, but a record of the interview purporting to give particulars of what took place was made by J H Lindsay on the same day.

LINDSAY'S "IMPOSTOR NOTICE"

On the 3rd June, 1921, a notice was issued by Lindsay, with the permission of the Board of Revenue, stating that the "Board has got conclusive proof that the dead body of the second Kumar of Bhowal was burnt to ashes twelve years ago at Darjeeling town. It follows, therefore, that the sadhu who is calling himself the second Kumar is an impostor. Whoever will pay him rent or *chanda* (subscription) will do so at his own risk." This notice has been referred to throughout the case as the Impostor Notice of the 3rd June.

STAY AT DACCA

On the 7th June, 1921, the plaintiff left Jaidebpur and went to Dacca where he settled down in all respects as a member of Jyotirmoyee Devi's family in a house described as No 4, Armanitola, Dacca, and there received numerous visitors. The plaintiff remained in Dacca from the 7th June, 1921, to some date in the month of July or August, 1924. During this period the plaintiff frequently visited the houses of local people of position and attended a variety of social functions and ceremonies. It was a point in the plaintiff's case that throughout this period—as at Jaidebpur—the plaintiff never sought to secrete himself from public view, but on the other hand, courted investigation and examination in all possible ways.

TATTOO-MARK ON PLAINTIFF'S ARM

It should be mentioned that at the time when the plaintiff first made his appearance at Dacca, he had on his forearm a tattoo writing in Urdu script, which transliterated reads "*Bawa Dharam Das da chela Naga*". The plaintiff himself adopted the attitude that he did not know "what is tattooed in my arm—what is written there. I do not know how it reads. *Guru* got a tattoo man in the bazar to tattoo this on me at Srinagar". But the existence of this tattooing is of considerable importance in the case in that after the plaintiff had taken up residence at Jyotirmoyee Devi's house at Dacca, the latter made arrangements for the finding out of *guru* Dharam Das, and having him brought to Dacca. She first of all sent out Khatindra Nath Mukherjee (the son of her sister Indumoyee Devi) along with her own officer Jitendra Nath Bhattacharjee. They were unable to discover Dharam Das. Subsequently, she sent her son-in-law, Satinath Banerjee (Sagar), and one Atul Roy together with a sanniyasi named Mahabir, and these were successful in tracing Dharam Das, and they brought him to Dacca on the 26th August, 1921, where he stayed in Jyotirmoyee Devi's house for three or four days, and then, as the plaintiff says, left "for fear of the police".

When the plaintiff first went to Dacca in June, 1921, to live with Jyotirmoyee Devi, he was still wearing his beard and long hair. But sometime in the month of August or September of that year he shaved off his

beard, though he still retained the matted hair. At about the same time he started wearing ordinary clothes, having already discarded his *length* from the day of the declaration of identity. A few years later he cut off his long hair.

SATYABHAMA'S LETTER TO BIBHABATI DEVI

In the year following that in which the plaintiff had taken up residence in Dacca, he was followed there by Satyabhama Devi, Jyotirmoyee Devi's grandmother, who came on the 14th July, 1922, and took up residence in the house where the plaintiff was living with Jyotirmoyee Devi. About ten days after Satyabhama Devi's arrival, she wrote a letter to the defendant Bibhabati Devi asking her to come and see the plaintiff and convince herself of his identity. This letter was delivered at the house of Bibhabati Devi, but she refused to accept delivery of it.

RANI'S LETTER TO COLLECTOR DRUMMOND

At about the same time Satyabhama Devi sent another letter which was dated the 29th July, 1922, to J. G. Drummond, the then Collector of Dacca. In that letter she said: "Acting on your suggestion, I have taken the trouble to come down to Dacca and met the sadhu—I have seen him every day at Jaidebpur during his stay there. After coming here I have seen him daily. I have come to the conclusion that he is no other than my second grandson, Kumar Ramendra Narayan Roy." In a later part of the letter she said: "There was a rumour of poison having been administered to my second grandson at Darjeeling, and there was a deep mystery regarding the alleged death of my second grandson at Darjeeling. As far as my information goes his body was never cremated. There was some discussion on this point at the time of the *sradh* at Jaidebpur. There was also a persistent rumour afloat not only in Bhowal, but in several parts of Bengal that my second grandson was alive and moving with the sadhus."

She pointed out that enquiries were made by Drummond's predecessor, J. H. Lindsay, and said that she would be obliged if she could be supplied with a statement of the nature of the enquiry that had been made, and also with a copy of the evidence that had been obtained or elicited at the enquiry, and added: "I propose to have the evidence examined by six eminent lawyers, if possible, one lawyer from each one of the six different High Courts of India." She undertook to bear the cost of this examination from her own private funds.

As a question had previously arisen as to whether Satyabhama Devi, by reason of her age, had sufficiently good eye-sight to be in a position to recognise the plaintiff, Satyabhama Devi stated in her letter that "there is no defect in my vision and that my eyes do not deceive me * * *. The recognition by me of my second grandson cannot, therefore, be regarded as an illusion." She asked that Mrs. Drummond should come over to see her in order that Mrs. Drummond might make a report on Satyabhama Devi's physical condition. Neither of the two letters of Satyabhama Devi mentioned above were written with her own hand, and even the signature in them was not hers but put on by means of a rubber stamp.

A few months later, that is to say, on the 15th December, 1922, Satyabhama Devi died in the house occupied by Jyotirmoyee Devi and the plaintiff, where

Satyabhama Devi had been staying ever since her arrival in Dacca in the previous July, and at the cremation the plaintiff was one of those who carried the bier and he it was who performed the last rites including the *mukhagni* (setting fire to the mouth). Subsequently, the *siadh* of Satyabhama Devi was held in the usual way on the eleventh day from the date of her death, and the rites and ceremonies in connection with it were performed by the plaintiff.

JYOTIRMOYEE DEVI'S REQUEST FOR AN INTERVIEW WITH K C DE

The year 1923 marks another stage in the course of events. In that year the Member of the Board of Revenue, K C De, paid a short visit to Dacca, and while he was there, Jyotirmoyee Devi sought an interview with him, but K C De replied on the 7th August, 1923, saying that it would not be proper for a lady belonging to a very high family to come and see him at the Circuit House, and suggested that Jyotirmoyee Devi's son-in-law, Chandra Sekhar Banerjee (Bibhuti), should come and see him in her stead. An interview duly took place at which K C De made the suggestion that the plaintiff should himself put in a petition, as no action could be taken on any petition by the sister or grandmother or tenants.

MEMORIAL TO BOARD OF REVENUE

Subsequent to the interview Chandra Sekhar Banerjee took legal advice in order to decide whether a suit should be started or a memorial presented, and eventually it was decided to take the latter step, but it was not until the 8th December, 1926, that a memorial was presented. This memorial called for an enquiry into the plaintiff's identity and for the withdrawal of the impostor notice. In the memorial a case was made on behalf of the plaintiff which will have to be contrasted with that subsequently made in the present suit. The memorial was in due course considered by the Board of Revenue, and ultimately after a formal hearing it was rejected on the 8th April, 1927, on the short ground that the enquiry asked for would not benefit anybody, for even if the Board had the power to compel the attendance of witnesses and to administer the oath to them which it had not, it would lead to no useful result. If the plaintiff as the outcome of the enquiry was found to be an impostor, it would be a waste of time, and if it turned out that he was the Kumar, the Board could not restore the estate to him.

PLAINTIFF IN CALCUTTA

Except for a brief visit to Dacca in the month of January, 1928, and another visit to Dacca in the month of April in the year 1929, the plaintiff remained in Calcutta until the month of October in the year 1929. In Calcutta the plaintiff lived in a house in Harris Mukherjee Road, and with him lived Jyotirmoyee Devi and her son Budhu (Jalad). On the very day he first arrived in Calcutta he called on the defendant Sarajubala Devi at her house at No 8, Madhu Gupta Lane, and according to his and her account of the meeting, she at once recognised him as her husband's younger brother, Ramendra Narayan Roy.

During the period 1924 to 1929, while the plaintiff was in Calcutta, he was moving freely about just as he had previously done throughout the

preceding three years when he was in Dacca. The plaintiff was seeing high officials and taking part in social life generally. He attended parties and functions at which the Governor of Bengal and the Viceroy were present, and was even introduced to them as the Kumar Ramendra Narayan Roy. In particular, he attended a party given in honour of Raja Janakinath Roy at which party Lord Lytton was present, and the plaintiff was introduced to him. The plaintiff also became a Director of the Bengal Flotilla Service Co., Ltd. In a word, the plaintiff was conducting himself in all respects as if he were indeed the second Kumar of Bhowal and he was accepted as such.

Upon his removal to Dacca in the year 1929, Jyotirmoyee Devi and her family went with him, and they all continued to live together from that time onwards.

COLLECTION OF RENTS

After returning to Dacca the plaintiff began to collect some of the rents payable in respect of an one-third share of the estate. He produced at the trial collection papers to show that he did in fact collect some rents, and moreover, he held a *punyaha* (that is, the inauguration of a tenancy year) at his house in Dacca in three successive years.

DEFENDANTS' CASE AS MADE AT THE TRIAL

We now come to the defendants' case as made at the trial. At the outset it may be said that it is common ground between the defendants and the plaintiff that at the time when the second Kumar of Bhowal went to Darjeeling in the year 1909, he was suffering from an advanced stage of syphilis, and that he arrived at Darjeeling on the 20th April, 1909, and occupied the house called "Step Aside". The defendants also agree that the second Kumar of Bhowal fell ill on the 6th May, but they say that he died not in the early evening of the 8th May, as contended by the plaintiff, but shortly before midnight on that day. They denied that he died from arsenical poisoning or from any kind of poisoning, and said that his death was entirely a natural one due to the effects of biliary colic.

DEATH AT MIDNIGHT AND CREMATION IN THE MORNING

The important part of the defendants' case is that they said that the second Kumar did not die in the early evening of the 8th May, and consequently, there was no evening procession at all, and there was no rain in the evening of the 8th May as alleged by the plaintiff. The defendants' case was that the dead body of the second Kumar lay all night in the house and was carried out to the cremation ground in a procession at about nine o'clock the next morning, and was duly cremated with all the customary rites and ceremonies. It was admitted on the plaintiff's side that a funeral procession did take place on the morning of the 9th May, but the case was made that it was not the body of the second Kumar which was burnt, but some other body produced during the course of the night, in order to avoid any scandal which might have arisen by reason of the abortive cremation on the previous evening.

The defendants rely upon the fact that a large public meeting was held in Darjeeling on the 16th May, 1909, for the purpose of expressing sympathy with and condolences to the Bhowal Raj family, and that no one then questioned the death of the second Kumar

DENIAL OF RUMOURS PRIOR TO 1917

The defendants dispute the existence of any early rumours, and indeed they went so far as to contend that there were no rumours at all in the year 1909 or any rumours prior to the year 1917. There were rumours in that year which led to the writing by Satyabhama Devi of the letter dated the 3rd September of that year to the Maharajadhiraj of Burdwan. The defendants wholly deny any discussion about *kushaputtahka* ever having taken place, and say that at that time no one was raising any doubts as to the death of the second Kumar. On the contrary, his death was taken as an accepted fact.

The defendants altogether repudiate the account of the visit of a sannyasi to the Madhab Bari at Jaidebpur, and as regards the visit of a *mouni* sannyasi, they argued that Akshay Roy was a person of weak intellect and given to *ganja* smoking, and that any rumour there might have been must have emanated from his disordered brain. They further say that there never was any quest by Akshay Roy, nor did Kripamoyee Devi or Satinath Banerjee ever take any steps to make enquiries of sannyasis concerning the second Kumar. In a word, the defendants, while denying the existence of any rumours prior to the year 1917, admitted the existence of some rumours in that year, which, however, they said were of such a character and of so little effect that no action was taken in consequence of them.

As regards the writing of the letter by Satyabhama Devi, it was the case of the defendants that after the receipt of the answer to that letter the rumours, such as they were, entirely died down, and whatever disquietude or hope they might have aroused came to an end once and for all, and all concerned comported themselves upon the footing that all the three Kumars of Bhowal were dead.

With regard to the events in the year 1921, the defendants do not dispute the fact that the plaintiff appeared on the Buckland Bund at Dacca in the early part of that year. But their case is that the plaintiff was not recognised or even suspected as being the second Kumar by any one at Buckland Bund, and that nobody had said or suspected that he was the second Kumar until his alleged declaration of identity on the 4th May, 1921, at the house of Jyotirmoyee Devi at Jaidebpur.

THEORY OF UTTER DISSIMILARITY

According to the defendants the plaintiff looked utterly different from the second Kumar and could not speak or understand the Bengali language. The defendants' case throughout was that the plaintiff was an illiterate man from the Punjab who had been a sannvasi almost from his childhood, and that the only language he could speak was some Hindi dialect. That he was a Punjabee, the defendants said, the plaintiff himself admitted even at an early stage and while he was still at the Buckland Bund.

KASIMPUR VISIT

With regard to the visit of the plaintiff to Kasimpur on or about the 5th April, 1909, the defendants' version of the matter is that Atul Prosad Roy Chowdhury caused the plaintiff to be taken to Kasimpur by an officer, not because the plaintiff was suspected as being the second Kumar, but because the uncle of Atul Prosad Roy Chowdhury—Saroda Prosad Roy Chowdhury—had no son and so wanted the plaintiff as a sannyasi to perform a ceremony known as *putresti jayna*, that is to say, a sacrifice with the object of obtaining a son. The defendants conceded that the plaintiff was sent from Kasimpur to Jaidebpur on an elephant, but put forward the explanation that this was done because Jogendra Nath Banerjee, Secretary to the Bhowal Raj, was fond of sannyasis and there was a standing arrangement between him and Atul Prosad Roy Chowdhury that "whoever could come across a good sadhu will send him (the sadhu) to the other."

The defendants put forward evidence to the effect that "while the sadhu remained at Kasimpur, he said that he was a resident of the Punjab, and that his name was Sunder Das"

VISITS TO JAIDEBPUR

The defendants, as negativing any recognition or suspicion that the plaintiff was the second Kumar, relied upon the fact that when the plaintiff first came to Jaidebpur, he lived under a tree and was not invited to take up his abode in the house. The defendants agree that the plaintiff stayed at Jaidebpur for a period of three days. There is, however, a dispute as to whether the plaintiff arrived at Jaidebpur on the 30th Chaitra, 1327 (12th April, 1921), and left on the 1st Baisakh of the following year (15th April, 1921), or whether he arrived on the 31st Chaitra and left on the 2nd Baisakh.

DECLARATION OF IDENTITY THE OUTCOME OF A CONSPIRACY

As regards the period from the 30th April onwards, the defendants admit that the plaintiff was in the house of Jyotirmoyee Devi, but they do not accept the plaintiff's version of the course of events during that time, or the circumstances and manner in which the declaration of identity by the plaintiff came about. The defendants' case, concisely stated, is that the plaintiff was a genuine sannyasi, a native of the Punjab, and not a Bengalee at all, and that the circumstances antecedent to and attending the declaration of identity were such as to indicate that the plaintiff himself was not only reluctant to play the part of the second Kumar of Bhowal, but only ultimately consented to do so as a result of persuasion or pressure exercised upon him by Jyotirmoyee Devi and her family. The defendants made the definite case, therefore, that the plaintiff was an impostor who only assumed the role of the second Kumar of Bhowal in order to claim a share of the estate, and that this action was the outcome of a conspiracy on the part of Jyotirmoyee Devi and her associates. The defendants contended that the manner of the alleged recognition on the 4th May, 1921, and in particular, the test supposed to be provided by an examination of the marks on the body of the plaintiff indicate that there was no real recognition, and that the marks found on the body of the plaintiff, such as they were, were pronounced to be those of the second Kumar, and not that the marks actually possessed by the second Kumar were found to be on the body of the plaintiff.

PROPAGANDA AND MASS SUGGESTION

The defendants relied upon the fact that subsequent to the holding of the meeting of the 15th May, 1921, the supporters of the plaintiff started an intensive campaign on his behalf, in the course of which propaganda of all kinds came into existence, including not only writings in the newspapers but the publication of books and pamphlets, which propaganda eventually resulted in such an influence on the minds not only of the relatives and friends of the family, but of members of the public at large that many persons misled themselves in the belief that the plaintiff was the second Kumar of Bhowal, this being particularly so, because of the supposed acceptance of the plaintiff by Jyotirmoyee Devi and other members of the family

According to the defendants, public opinion had been so inflamed, as a result of the campaign waged on behalf of the plaintiff and his cause, that even within a month after the declaration on the 4th May, 1921, and as an outcome of the issuing of the notice by the Collector of Dacca on the 3rd June, 1921, when an attempt was made to publish this notice on the 10th June, at a place called Mirzapur, there was a riot in the course of which a man named Jhumar Ali was shot dead by the police. The defendants justified the issuing of the notice of the 3rd June, 1921, on the ground that the Court of Wards had, prior to the issuing of the notice, obtained certain evidence in Darjeeling of the death and cremation of the second Kumar of Bhowal

DEFAMATION CASE OF DR ASHUTOSH DAS GUPTA

In connection with the propaganda, a pamphlet with the title "*Fakir Beshic Praner Raja*" was written by a man called Purna Chandra Ghose, son of Digendra Narayan Ghosh, who has already been referred to as the President of the Bhowal Taluqdar and Proja Samiti. This pamphlet was printed by a man named Satish Chandra Roy and put into general circulation. The pamphlet contained the charge or at any rate the imputation that the second Kumar of Bhowal had been poisoned at Darjeeling by the family physician, Dr Ashutosh Das Gupta. In consequence of this Dr Ashutosh Das Gupta on the 9th September, 1921, instituted criminal proceedings against Purna Chandra Ghose and Satish Chandra Roy for defamation, and in those proceedings the prosecution was conducted by the Government Pleader of Dacca on instructions given him by the Manager of the Bhowal Raj Estate or the Collector of Dacca as representing the Court of Wards, and the defendants maintain that the defence was really conducted by the plaintiff and his adherents. The case eventually ended, after it had been dealt by two Magistrates and had been taken to the High Court, in the conviction of the accused, and its importance lies in this that some of the persons who then gave evidence were afterwards witnesses in the present suit, and the statements they made in the criminal proceedings had to be considered in relation to the evidence afterwards given by them in the present proceedings

PLAINTIFF'S DELAY IN ASSERTING HIS CLAIM

The defendants lay stress on the fact that there was a long delay on the part of the plaintiff from the time of the direct challenge to his position afforded by the impostor notice to the date of the presentation of the memorial

in 1926, which the defendants aver was the very first claim in any formal shape ever put forward by the plaintiff himself. The defendants ascribe this delay, and the subsequent delay as between the rejection of the memorial in March, 1927, and the institution of the suit to the fact that the plaintiff needed all this time to obtain knowledge of the second Kumar's personality and habits and to acquire facility in Bengali speech and some skill in reproducing the signatures of the second Kumar.

IMPORTANT EVENTS SUBSEQUENT TO DECLARATION OF IDENTITY

We have given a very brief summary of the case made on behalf of the plaintiff and the defendants respectively, and we now think it desirable to refer to certain other matters in connection with the history of events subsequent to the declaration of identity by the plaintiff on the 4th May, 1921. We have referred to the fact that on the day following the declaration of identity, a letter was sent by Needham, the then Manager of the Bhowal Raj Estate, to Lindsay, the Collector of Dacca, requesting that a "sifting enquiry" should be made with respect to this part of the plaintiff's case. As from the 5th May, 1921, Lindsay, after consultation with Sasanka Coomarr Ghose, the Government Pleader of Dacca, adopted an attitude hostile towards the plaintiff, whereas up to that date the officials of the Court of Wards and the Manager of the Bhowal Raj Estate had, in no way, shown themselves inimical towards the plaintiff and his claims. The plaintiff dates the change of attitude on the part of the Court of Wards as from the 6th May, 1921, and says that this appears from the terms of a report made on that date by the Assistant Manager of the Bhowal Raj Estate, Mohini Mohan Chakravarty, to Needham, the Manager. The plaintiff asked the court below to accept the view that all the opposition to his claim was engineered by Satyendranath Banerjee, the brother of the defendant Bibhabati Devi.

CONDUCT OF SATYENDRANATH BANERJEE

The plaintiff made the case that after the party returned from Darjeeling to Jaidebpur in May, 1909, Satyendranath Banerjee plotted to get his sister, the defendant Bibhabati Devi, under his own influence and control, in order that he might be in a position to derive an advantage to himself, which admittedly he ultimately did, from the fact that Bibhabati Devi would be in possession of a substantial income arising from her share in the estate as the widow of the second Kumar of Bhowal.

To return to the year 1921, it seems that at just about the time that Mohini Mohan Chakravarty was making his report to Needham, Satyendranath Banerjee had an interview in Calcutta with the then Member of the Board of Revenue, who was the controlling authority of the Court of Wards, and subsequently, had several interviews with M. H. B. Lethbridge, who at that time was the Secretary to the Board of Revenue.

On the 7th May, 1921, an account of the plaintiff's doings in Dacca and Jaidebpur had appeared in "The Englishman", a newspaper published in Calcutta. On the 9th May, there appeared in the same paper a letter over the signature of Satyendranath Banerjee, in which it was stated: "The late Kumar was attended in his last illness by Lieutenant Colonel Calvert, the then Civil Surgeon of Darjeeling, and the death certificate was given by Mr

Crawford, Deputy Commissioner of Darjeeling" In the letter the writer stated that he was personally present "at the time of the death of the late lamented Kumar and attended the funeral service along with other numerous friends and relatives of the deceased who were then present in Darjeeling"

ACTIVITIES AT DARJEELING

Some four days after this, Sasanka Coomar Ghose, the Government Pleader, went from Dacca to Calcutta, and from there proceeded to Darjeeling, accompanied by Satyendranath Banerjee, for the purpose of making enquiries as to the truth of the plaintiff's story and of obtaining statements from such persons who might be in a position to support the version of the matter given by Satyendranath Banerjee in his letter to the Press. The presence of Satyendranath Banerjee at this investigation is one of the initial matters relied upon by the plaintiff. It shows that the opposition to the plaintiff's claim was promoted by Satyendranath Banerjee, and was not a genuine opposition in the interest of the defendant Bibhabati Devi. As a result of the activities by Sasanka Coomar Ghose and Satyendranath Banerjee in Darjeeling, some statements were secured from a number of persons, some of whom eventually became witnesses in the suit. At or about the time this investigation was proceeding in Darjeeling, agents on behalf of the plaintiff were also equally at work endeavouring to secure materials which might be helpful to the plaintiff's claim.

ACTION BY COURT OF WARDS

On the 13th May, 1921, the Court of Wards obtained from the Standing Counsel of Bengal an opinion with regard to the position. This opinion was to the effect that at that stage it was not possible to take any criminal proceedings against the plaintiff. This opinion was incorporated in a letter sent by Lindsay, the Collector of Dacca, to Lethbridge. The letter was dated the 21st May, 1921, and it also contained certain notes by the Government Pleader of Dacca.

WARNING NOTICES BY LINDSAY

On the 27th May, 1921, Lindsay wrote to the Member of the Board of Revenue a letter which contained a proposal that notices should be issued on the tenants of the Bhowal Raj Estate telling them not to pay rents to the plaintiff, and on the 28th May, 1921, Lindsay sent an order to all the officers of the estate warning them not to acknowledge the plaintiff as the second Kumar. The order for the issuing of the notice referred to in the letter of the 27th May, just mentioned, was communicated in a telegram sent by the Board of Revenue to Lindsay on the 1st June, 1921. This was confirmed by a letter of the same date.

The issuing of the notice above mentioned was followed up by a general promulgation in the Bhowal District of the Impostor Notice of the 3rd June, 1921, to which reference has already been made. It was when this notice was being proclaimed in Mirzapur Bazar by beat of drum that there took place the riot already mentioned. In the same month Lindsay and Sasanka Coomar Ghose went to Jaidebpur, and as a result of their visit a charge of

rioting was brought against a number of those tenants, who had declared that the plaintiff was the second Kumar. This prosecution was unsuccessful and the accused tenants were acquitted.

On the 13th June, 1921, a further notice was issued over the signature of Lindsay in which it was stated that "the Board of Revenue has found that the sannyasi who says he is the second Kumar is an impostor. All the servants of the Bhowal Court of Wards are hereby informed that if they are found directly or indirectly espousing the cause of the sannyasi, they will be liable to summary dismissal."

CONFIDENTIAL, CIRCULARS AND ORDERS

On the same day, confidential letters were sent to the naibs of the Bhowal Estate, asking them for the names and addresses of such tenants as were refusing to pay rent, unless the name of the plaintiff was put in the rent receipts as one of the proprietors of the estate. These letters were followed, two days later, by an order in writing made by Needham, the manager of the Bhowal estate, calling upon Nogendra Nath Roy Chaudhuri, a naib of Chandpur, to explain why he had taken a prominent part in the meeting of the 15th May, and why he was still helping on the cause of the man who had been declared to be an impostor. This order was accompanied by a further order directing Nogendra Nath Roy Chaudhuri to see Mohini Mohan Chakravarty, the assistant manager of the Bhowal estate, "immediately on getting the order, without fail". On the 22nd June, 1921, a letter was sent by one Digindra Nath, who was the Inspector of No. 3 Circle of the Bhowal Raj Estate, to Nogendra Nath Roy Chaudhuri, requiring him to inform the writer, "by a specially confidential report", the names of all the leaders in his Dih, "who treat the sannyasi as the second Kumar, and support his side, and help him in the matter of realisation of subscription, and throw obstacle in the way of realisation of rent, and what sort of work they are doing in that direction", and further, to state what steps Nogendra Nath Roy Chaudhuri had taken to bring these persons under control, or to set up an anti-campaign against them. The letter concluded by saying that, "there is an order to issue certificates against those who do hostile acts of the above nature. That course may be adopted, if necessary". There was a postscript to the letter which said, "Please keep this letter, and other letters of this nature strictly in secret, and do your duty, and at the time of sending the report, don't copy it in the copy book, but send the report yourself very confidentially, and keep a copy thereof. A separate serial number of the reports may be used for these".

A similar order was sent to Sarat Chandra Mukherjee, asking him to show cause why he should not be dismissed from service for signing the declaration that the plaintiff was the second Kumar of Bhowal, and for openly helping the cause of the plaintiff in spite of the orders against such action.

On the 5th July, 1921, a Circular Order was issued by Lindsay to the effect that certificates should be issued against those tenants, the rents from whom were in arrears for more than a year, and that the rumour to the effect that the Board had withdrawn from the notice of the 3rd June the word "impostor" and "the matters relating to subscription" was a lie.

On the 28th July, 1921, a further notice was sent out from the Chief Manager's office, Jaidebpur, to the naibs of the various Dihis of the Bhowal Raj Estate, informing them that they were to make "a list of the certificates

in the names of the tenants from whom rents were due, since 1325 or 1326 B S", and "who are acting in opposition to the *Sarkar* (estate)"

Then, about a month later, another order was sent out from the Chief Manager's office to the naib of Dihu Chandpur in the following terms "From the beginning the men on the side of the Bhowal sannyasi had been saying that Dharam Das Naga, the preceptor of the said sannyasi, would come with some Rajahs, Maharajahs, and many Naga sannyasis, and will prove before the public that the sadhu who has given out that he is the second Kumar of Bhowal is really the second Kumar of Bhowal, and the party of the sadhus will install the sadhu on the seat (*gadi*) of Bhowal without even instituting any suit * * * He will narrate in detail before the public incidents of his past life, as soon as his preceptor arrives, in fluent, clear Bengali dialect of Bhowal. At the time when a meeting was held at Jaidebpur on the 1st of Jaistha last, the party of the conspirators by circulating a similar rumour got many people assembled at the meeting. But in fact nothing of that kind took place. Since the last few days they have been preaching by bringing one sannyasi only that that sannyasi is Dharam Das Naga, the preceptor of the sadhu, and he will prove the sadhu as the second Kumar without any suit. Please warn the tenants particularly, so that, being deceived by placing reliance over and over again on the false representations of this nature, they do not pay subscription of any sort. That the dead body of the second Kumar was duly burnt to ashes twelve years ago at the town of Darjeeling will clearly appear from the notice of the Board"

Two months later, Jogendra Nath Banerjee sent out an order to the Chief Manager's office at Jaidebpur, which was marked as 'urgent' and 'confidential'. This order gave a warning that the naibs should keep particular watch so that "the conspirators" (that is to say, the plaintiff and his supporters) might not realise any subscriptions by deceiving the tenants, and directed the naibs to report to him without delay the activities and movements of the persons who would realise the subscriptions. The order concluded with a warning that particular steps would be taken against any naib who showed any indifference in this respect.

A year later, Jogendra Nath Banerjee sent out two letters, each dated the 5th December, 1922. In one of these letters, the naib of Dihu Rajendrapur was required to send immediately addressed to Jogendra Nath Banerjee the names of eight or ten or more principal persons with their addresses who were the leaders of the plaintiff's party, and "who are particularly helping this hypocritical cheat"

The other letter was of a similar character, and in it the plaintiff was described as a "cheat and impostor"

In the year 1923, the manager of the Court of Wards wrote to the Collector of Dacca, recommending that there should be a remission of interest, and also the payment by instalments of a large sum of money, then due from Phani Bhusan Banerjee, because of "his faithful and loyal devotion to this estate", and that "during the present troubles Phani Babu may expect this"

It is evident that the "loyal devotion" and the help said to have been rendered by Phani Bhusan Banerjee was in connection with the difficulties which had arisen owing to the activities of the plaintiff. Thus Phani Bhusan Banerjee was a witness in the suit.

In the course of the following two years, the Court of Wards granted a *mirash* settlement of certain lands to a man named Radha Charan Das

in consideration of the help he had rendered to the estate as against the plaintiff

On the 24th April, 1929, an order was made on the plaintiff, forbidding him to enter within the jurisdiction of the Jaidebpur Police station. In the order the plaintiff was required to appear and show cause on or before the 11th May, 1929

In answer to this, the plaintiff did appear in the court of the District Magistrate of Dacca on the 30th May, 1929, and then stated that he would not visit Jaidebpur in the near future. In view of that assurance, the Bhowal estate did not press for the continuance of the order.

On the 29th October, 1931, a notice was issued by the District Magistrate of Dacca to the Presidents of the Union Boards, stating that it was the desire of the District Magistrate that the President and members of the Union Boards should try their best to explain to the tenants of the Bhowal estate, so that they would not pay any attention to propaganda on behalf of the sadhu, and would not pay any sum to any one who might come to realise rent on his behalf.

In the course of the years 1929 to 1931, a number of orders were issued by the District Magistrate of Dacca, either prohibiting the plaintiff from going within the jurisdiction of the Jaidebpur Police Station, or banning him from realising or receiving any moneys, such as rents, cesses and *nazars* from the tenants of the Bhowal estate.

On the 5th November, 1929, there was another order issued by the District Magistrate of Dacca, prohibiting the plaintiff or any of his party from receiving any moneys, such as rents, cesses and *nazars* from the tenants of the Bhowal estate, and on the following day the Chief Manager of the Bhowal estate issued an order to the naib of a place called Pirujah telling him to take certificate proceedings against all the *bangshi* tenants of that Dihn.

On the 9th November, 1929, a letter was written by Sitanath Mukherjee, the naib of Kapasia, suggesting to the Chief Manager of the Bhowal estate that as two of the members of certain Union Boards were siding with the Bhowal sannyasi, suits should be instituted against them with a view to ejecting them from the land held by them under the estate.

SECTION 144 CR P CODE PROCEEDING

About a year after the present suit was started, namely, on the 29th May, 1931, a notice under section 144 of the Code of Criminal Procedure was issued by the District Magistrate of Dacca on the plaintiff, requiring him not to proceed to Jaidebpur or to any other place within the Bhowal estate, except for the limited purpose of taking statements from persons likely to be witnesses in the suit which he had instituted. In that notice the plaintiff was addressed as Sunder Das, *alias* Bhowal sannyasi, *alias* *jal* sadhu (i.e., the pretender sadhu).

In passing, it may be said that in the course of the argument before us it was admitted by the counsel appearing for the defendants-appellants that, having regard to the fact that at the time of the issue of the last mentioned notice the suit was actually pending, the reference to the plaintiff as a "*jal* sadhu" was highly improper.



MR PANVALAL BASU (*Chief Judge*)

"CONFIDENTIAL OFFICE" SET UP

It seems that a "confidential office" was set up in the Jaidebpur Rajbari for collecting information and obtaining support and testimony for the purpose of resisting the plaintiff's claim, and we find that on the 30th April, 1933, an account was submitted by a man named Nagendra Nath Dhar for work done by him in this connection, and on the 18th May, 1933, there was a letter written by one Jadunath Deb Sarman Roy Chaudhuri, a naib of the estate, to Jogendra Nath Banerjee, in which he said that it is beyond his power to win over Digendra Narayan Ghose. The letter continues "I do not think there is any other man in this Dhi, belonging to the other party, save and except these two persons. I sent Naku Shaik to you on behalf of the my party. Naku Shaik and Sadu Shaik told me that they came back long ago after doing works according to your directions on seeing you. I shall soon send to you one or two other persons that may be secured."

DEFENDANTS' ATTEMPTS TO SECURE AND SUPPRESS EVIDENCE

At the end of the same month, Jogendra Nath Banerjee wrote to this same naib a letter, dated the 31st May, 1933, in which he said, "Please keep all letters that I send you in this connection in your own custody, or burn them after perusal. Whenever you come to headquarters in connection with official business, please see me and take oral instructions from me in this connection. Please see that it is not otherwise. Please send to me by registered post the statements of all the witnesses you have chosen for the estate, after taking their statements there. A specimen of the statement is sent herewith. Please see that the language of all the statements be not identical * * *. Please do the work with special promptness and dexterity." Thereafter followed the significant postscript which reads "The list of the witnesses on behalf of the plaintiff [opposite party of the Sarkar (estate)] is sent herewith."

A substance of the statement referred to in the letter was put in evidence at the trial, and marked as *Exhibit 309 (1)*

Some six months later, a man named S C Chandra, one of the Circle Inspectors, sent a letter to Jadunath Deb Sarman Roy Chaudhuri, the naib of Ranigunj, in which he pointed out that "the trial of the declaratory suit, in which Ramendra Narayan Roy *alias* the impostor sadhu is the plaintiff, and the estate is the defendant, will begin in open court within this very month." The letter proceeded "The list of witnesses on behalf of the other side has already been made over to you. Hence, I write to you that you will do the needful secretly, according to the instructions given before, immediately on receipt of this letter, so that no tenant of the estate or any witness of the other side will depose on behalf of the other side." The same S C Chandra, in a letter, dated the 20th December, 1933, once more wrote to Jadunath Deb Sarman Roy Chaudhuri as follows "Harish Chandra Nandi, an inhabitant of Dwighat, and Sarat Chandra Biswas of Baraigaon, within the ambit of your Dhi, were cited as witnesses on behalf of the ascetic (sannyasi) in his suit. There was an order upon you to arrange that they might not depose against the estate, but it appears that Harish Chandra Nandi has deposed for the ascetic. You could not induce him not to give evidence. When you understood that you would not be able to induce him, then it was your duty to inform it to this party and to Srijukta Rai Sahib (i.e.,

Jogendra Nath Banerjee), and to take the sail witness to Rai Sahib at Jaidebpur, but you did nothing of the kind, and you did not also inform any one that you would not be able to induce him not to give evidence. From this it clearly appears that you are, in a way, supporting the ascetic (sannyasi). For this reason you are directed to submit to this party, within five days, satisfactory explanation as to why you should not be dismissed from the service of the estate." The next paragraph of the letter says:

"Please arrange immediately so that Sarat Chandra Biswas of Baraigaon might not depose for the sannyasi, and inform the result within 5 days to this party...."

The third paragraph of the letter is in the following words

"Omar Ali of Mouza Ekuta within your Dhi: has been cited witness on behalf of the estate. Please consider in all particulars and inform, without fail, to this party and Srijukta Rai Sahib, within five days as to whether at the time of giving deposition, he will stand cross-examination or will confuse every thing, and whether any reliance can be placed upon his words. Let no impediment stand in the way. Please treat this as very urgent."

We have referred to these events, because it was an essential part of the plaintiff's case that the Court of Wards, as representing the defendants, on the one hand, endeavoured improperly to secure evidence on behalf of the defendants, and on the other, to prevent persons from giving evidence on behalf of the plaintiff and in particular with regard to his identity.

PUNJAB INQUIRY AS TO PLAINTIFF'S IDENTITY

As to the plaintiff's real identity, the case made by the defendants in their pleading was that the plaintiff was a Punjabee. During the trial an attempt was made by them to prove that the plaintiff was actually one Mal Singh of Anjla, a village in the district of Lahore in the Punjab, who upon his initiation as a sannyasi was given the name of Sunder Das. It may be noted in passing that the plaintiff himself was not asked at the trial whether he was not Mal Singh or Sunder Das.

It appears that after the interview which the plaintiff had with Landsay, the Collector of Dacca, on the 29th May, 1921, Landsay arranged, or at any rate, acquiesced in an investigation being made in the Punjab for the purpose of ascertaining the true identity of the plaintiff.

On the 31st May, 1921, a Sub-Inspector of Police named Momtazuddin, accompanied by one Surendra Kumar Chakravarty, a steward of the Bhowal Raj Estate, set out for the Punjab to make the enquiry, taking with them certain photographs of the plaintiff.

On the 27th June, 1921, Surendra Kumar Chakravarty sent from the Punjab a report to the Assistant Manager of the Bhowal Estate, in which, in effect, he said that he and Momtazuddin, under the name of Manmohan Babu (a name assumed for the purpose of the enquiry), first of all went to Calcutta, and from there to various places till they finally arrived at Hardwar. There Surendra Kumar Chakravarty discovered a sadhu named Hirananda at a place called Kankhal.

One of the photographs in the possession of Surendra Kumar Chakravarty was produced before Hirananda, and directly it was shown, a *Chela* (disciple) of Hirananda said that it was a photograph of "Santodas", a *Chela* of

Dharam Das According to his own account, Surendra Kumar Chakravarty the same day together with Momtazuddin proceeded to Amritsar, where the same photograph was recognised to be that of Sunder Das, a disciple of Dharam Das The report goes on to state that Surendra Kumar Chakravarty and Momtazuddin proceeded to Chhoto Sansra, about twenty miles from Amritsar, and there succeeded in finding Dharam Das himself Directly Dharam Das saw the photograph of the plaintiff, he recognised it as being that of one his *chelas* named Sunder Das

The same day, i.e., on the 27th June, 1921, Dharam Das and certain other persons were taken before a local Honorary Magistrate and made to identify a "standing photograph of Sunder Das"

Surendra Kumar Chakravarty's report further stated that there was no doubt that the Jaidebpur sadhu (i.e., the plaintiff) was a Punjabee

On the 2nd July, 1921, the Assistant Manager of the Bhowal Estate forwarded to Lindsay an English translation of Surendra Kumar Chakravarty's report, saying that "they have got some clue to trace out the real identity of the man in the near future" The letter added that the "Board has got conclusive proof about cremation, and as the real identity of the sadhu is about to be ascertained, the proposal, if any, of changing any portion of the Notice should be reconsidered"

PUNJAB STATEMENT OF DHARAM DAS

This latter sentence referred of course to the Notice of the 3rd June, 1921 The statement made by Dharam Das before the Honorary Magistrate (whose name was Raghubir Singh) was as follows "Dharam Das, *chela* (disciple) of Harnam Das, by occupation *Udashi* age 45, address, Sansra, profession *Shebadar* I reside at Mouza Sansra, Thana Aujla, District Amritsar This picture which has been shown to me is that of my *chela* (disciple) Sunder Das His name was formerly Mal Singh He used to live in Mouza Aujla in the district of Lahore His cousin (father's younger brother's son), Narain Singh, who now lives at Chak 47 in the district of Montgomery, came to me with Mal Singh at Nankana Sahib. That was 11 years ago, and I made him my *chela* (disciple) at that time At that time Mal Singh was 20 Mal Singh's *parbaresh* (those who had brought him up) were his uncles Manga Singh and Labh Singh of Ujail Six years ago, Sunder Das left me The eyes of Sunder Das were *billi* (cat like), and his complexion fair, I saw him four years ago at the Kumbh Mela at Prayag (Allahabad) (this would be in 1917) I have not seen him again. The *tasbir*, Ex P, is the *tasbir* (photograph) of my *chela* (disciple) Sunder Das "

As we have already mentioned, in the month of August, 1921, Dharam Das came to Dacca at the instance of Jyotirmoyee Devi During the course of the trial the plaintiff wished to prove certain statements made in Dacca by Dharam Das, but this was disallowed by the learned judge as not being admissible in evidence

ALLEGED ROGUS DHARAM DAS PRODUCED IN COURT BY DEFENDANTS

At a later stage of the trial, there gave evidence before the court a person who said that he was Dharam Das and that it was he who made the

statement before the Honorary Magistrate Raghubir Singh This Dharam Das identified the plaintiff in court as his own *chela* (disciple) Sunder Das He further stated that he himself had never been to Darjeeling, and that the plaintiff was in fact a man named Mal Singh belonging to Aujla in the district of Lahore

The plaintiff's case was that this witness was an impostor who had been procured by the defendants to personate the real Dharam Das

One of the points made by the plaintiff in substantiation of this was that the defendants never produced at the trial, in spite of having been given notice to do so, the actual photograph which was used for the purpose of the enquiry in the Punjab, that is to say, the one which was produced before the Honorary Magistrate, Raghubir Singh, at the time when Dharam Das made his statement The non-production of this photograph and various other aspects of the evidence given in the box by the witness calling himself Dharam Das and other evidence given in connection with the Punjab enquiry led the learned judge to take the view that, as the plaintiff contended, the witness was not in fact Dharam Das

NON-PRODUCTION OF DOCUMENTS BY DEFENDANTS

We would add here that the disappearance, or at any rate, the non-production of the photograph is in a way typical of the attitude, or rather a certain aspect of the tactics, adopted by the defendants at the trial in declining, or at any rate, failing to produce material documents which, had the case been tried on the Original Side of the High Court, the defendants would have been bound to disclose and specify in a proper affidavit of documents It is unfortunately a remarkable feature of this case that a number of documents which, for the determination of the main issue between the parties, might have been of material importance, and indeed, even conclusive on the matter, have not been forthcoming such, for example, as the telegram which admittedly was sent from Darjeeling to Jaidebpur announcing the death of the second Kumar of Bhowal Moreover, it seems clear that documents or copies of documents originally in the custody of the defendants found their way into the possession of the plaintiff in a way both mysterious and unexplained This is essentially the position with regard to the documents referred to in the proceedings as Satya's diary and Phani's diary

We think we have said enough to indicate on general lines the scope of the enquiry which was presented before the court at the trial

FEATURES OF THE TRIAL

The problem which the learned judge had to resolve was undoubtedly complicated by the fact that the plaintiff himself had not originally come forward of his own accord to say that he was the second Kumar of Bhowal, or to claim the estate, but put forward a claim at the instance of members of the Bhowal family and other persons Further, it seems obvious to us that the case which was eventually made in the course of the hearing on behalf of the plaintiff was not fully prepared, or even in detail decided upon, before the actual trial began It seems quite clear, in our opinion, that the plaintiff's story, in many of its aspects, was elaborated and even embellished as the

trial proceeded. Criticism of a similar nature may also be made as regards the conduct of the defendants.

It appears to us to be reasonably certain that the case as it ultimately shaped itself before the court had grown in the hands of the parties, neither side having had at the commencement of the proceedings any definite idea as to what the ultimate details of their case would be, and accordingly, a great deal of evidence was called on both sides designed to meet the particular exigencies of the moment. We think the learned judge was right in saying that "the evidence was not shaping the case, but the case the evidence."

Further, as the trial did not begin until after the lapse of nearly a quarter of a century from the time when the plaintiff's story opens, witnesses who might have given valuable or even conclusive evidence on one side, or the other, were not available by reason of death or disappearance.

Even in regard to the witnesses who were called, the court was faced with the task of assessing the effect on their evidence of faulty or incomplete recollection as well as, in some cases, of positive untruthfulness. We consider these observations to be fully justified, because, in our opinion, there is no doubt whatsoever that a great deal of false evidence was given on both sides, and indeed the learned counsel appearing for the defendants-appellants was, in the course of his reply before us, himself constrained to concede that that was so. We need hardly say what a deplorable state of affairs this reveals.

Having regard to the time which elapsed between the year 1921 and the institution of the suit, one very important point which had to be considered at the trial, and one which has a definite bearing on the truth or otherwise of the plaintiff's main story, is the question whether and to what extent it was possible for the plaintiff to have acquired knowledge of the habits of the second Kumar and of the events in the life of the latter, and further, the likelihood or otherwise of the plaintiff having been prepared or having prepared himself to play the part of the Kumar in the witness box.

CONDUCT OF THE CASE

As regards the conduct of the case generally, we think it our duty to say that not only was there an unnecessary number of witnesses called, but there was considerable prolixity and repetition in their evidence, with the result that the trial was prolonged to an unconscionable length. In particular, we are strongly of opinion that there was a wholly unnecessary amount of cross-examination of some of the witnesses, especially of those witnesses who were examined on commission, and what is far worse, in the course of the cross-examination of more than one of the witnesses, questions were put casting reflections upon their moral character and behaviour and making suggestions or insinuations with regard to their private lives, all of which questions were in the highest degree scandalous and for which, as far as one can see, there was no justification whatever. In our opinion, such a method of procedure was grossly improper and merits severe condemnation. It ought never to have been permitted by the learned judge, for not only was it reprehensible in itself, but in all probability it had the effect of causing persons of some position and standing in life to evince a reluctance, or even to refuse altogether, to come to court and give testimony in the witness box, which not only would have been material to the case, but of considerable assistance to the court in the elucidation of many of the matters in issue between the parties. The conduct we are criticising certainly resulted in a

suggestion being put forward in the course of the proceedings that what we have indicated did actually happen. We would add that it is to be hoped that these observations will not pass unnoticed in connection with other cases in the future.

TRIAL COURT'S JUDGMENT

Turning now to the judgment of the court below, one cannot help feeling that the learned judge, in considering the vast volume of evidence which had been placed before him in the course of the inordinately lengthy trial, must have felt himself at a disadvantage to a considerable degree, owing to the matters referred to above, and in particular, by reason of the lapse of time, absence of important witnesses, non-production of documents, and the existence of fabricated evidence.

The learned judge, in our opinion, however, in spite of these handicaps devoted to the case infinite care and industry, and he has produced a judgment which displays a comprehensive and conscientious consideration of all the points requiring determination for a proper decision in the case.

ENUMERATION OF TOPICS FOR CONSIDERATION

The manifold aspects of the case were dealt with by the learned judge more or less in compartments and under a series of headings set out by the learned judge himself as follows:

"(1) The family, the family seat, the family history down to the supposed death of the second Kumar on the 8th May, 1909. The second Kumar, as he was before this date, his education, habits, pursuits, speech, morals, relations with wife and sisters, except the major topic of literacy and knowledge of English and sports.

(2) Narrative of events from May, 1909, to December, 1920, when the plaintiff appeared at Dacca.

(3) The proceedings of the plaintiff and those of the defendants down to suit.

(4) Direct evidence on identity.

(5) Comparison of the plaintiff's body with that of the Kumar.

(6) Features from photos.

(7) Marks on the plaintiff.

(8) Gait, expression, voice.

(9) Summary of identifying circumstances.

(10) Mind of the plaintiff.

(11) Was the Kumar illiterate?

(12) Admissions and conduct.

(13) Darjeeling."

This was followed by another section which, although not mentioned by the learned judge in this list, may for purpose of reference be called "13(a)".

[(13a) The plaintiff's life as a sannyasi—being the period from May, 1909 to December, 1920]

“(14) Is the plaintiff Mal Singh of Aujla? Is he a non-Bengalee?

(15) Conclusion on the issue of identity”

CONCLUSIONS OF TRIAL JUDGE AS SUMMARISED BY HIM

The conclusions arrived at by the learned judge are very well summarised by him towards the end of the judgment. He has there stated that he had considered the whole of the evidence in the case with the utmost care, and he pointed out that the arguments of learned counsel on either side had missed nothing material that could be urged for or against the identity of the plaintiff. He states that “everybody concerned was fully sensible of the gravity of the issue and the difficulty of some of the questions that arose in this suit.”

He then proceeds to say that on the question of identity a great deal might be inconclusive, but a single fact “may be fatal.” So the case required the closest scrutiny and the enquiry as much precision as it was possible to attain.

The learned judge believed the direct evidence in support of identity, and he characterised it as the evidence of honest men and women of all ranks and conditions of life, including nearly all the relations, among them a sister and a sister-in-law and even an aunt and a cousin of the defendant Bibhabati Devi. With regard to the other witnesses on the subject of identification, the learned judge observed that they “include a great many men of education and position, grave, elderly men, whom one would not suspect of romance, who are as afraid of ridicule as any body, who have nothing to gain or lose, and who could not possibly mistake the Kumar * * * But even this body of evidence need not rest on the credibility of the witnesses alone. It has satisfied every possible test. One test is the incontrovertible situation that arose on the 4th May 1921, when the plaintiff declared that he was the second Kumar of Bhowal. Nothing fits the facts of that day except honest recognition by the people who knew him.”

Later the learned judge says “I have pointed out the facts, and the considerations that exclude a sudden conspiracy and a sudden adoption of a Punjabee, looking utterly different, and speaking a strange tongue, to play the role of the Kumar—the only theory left to the defence to explain the phenomenon, though it explains nothing, unless the sister had gone mad, and with her, the rest of the Pargana.”

The learned judge in effect puts the matter in one sentence by saying that “if the sister is honest, the other witnesses must be equally so.”

The learned judge then says “Another test, in itself conclusive, is the identity of the body proved to demonstration, and with mathematical certainty, by the bodily features, all exceptional, and by the bodily marks, all exceptional, which rest on nobody's credibility. These, in their totality, cannot occur in a second individual, and even if half of the marks go off, the scaly feet, and the irregular scar on the top of the left outer ankle, coupled with the bodily features, will be enough to sustain the identity with equal certainty. An individual is a collocation of accidents that never recurs, and that makes it or him unique.”

"Nothing in the mind of the plaintiff shakes this conclusion. So much of it which the defendants ventured to expose confirms it. His handwriting confirms it. Nothing that took place at Dajeeing could displace the conclusion, nor any thing in the account given of the period of his disappearance. Even if he had come back maimed and blind and deaf, the conclusion will stand. The stuttering and the Hindi accent are equally indifferent."

The learned judge places considerable reliance upon the fact, as he says, that from the time when the plaintiff first declared himself to be the second Kumar of Bhowal in the month of May 1921, he was not hiding for a day, he was accessible to all comers, seen by numerous people and cheered by a vast multitude of tenantry at a meeting held in that month, and that the plaintiff on the 29th May, 1921, appeared before the Collector of Dacca and prayed for an enquiry. The learned judge further points out that a number of petitions was put in on behalf of the plaintiff to the same effect, and that the plaintiff showed himself prepared to be faced and questioned. In contrast to this, according to the learned judge, the Court of Wards and the local officials did not take any serious steps to prevent the plaintiff from conducting himself as if he were the real second Kumar of Bhowal, or from collecting rents from the tenants of the estate.

The learned judge after a general discussion of portions of the evidence and matters in connection with the history of events from the year 1921 onwards, states his final decision in the case in these words: "The plaintiff is Ramendra Narayan Roy, the second son of the late Raja Rajendra Narayan Roy of Bhowal."

On the question of limitation, the learned judge, after a short discussion of the position as it appeared to him, came to the conclusion that the suit was not barred by limitation. He accordingly made a decree "declaring that the plaintiff is Kumar Ramendra Narayan Roy, the second son of the late Raja Rajendra Narayan Roy of Bhowal, and directing that he be put in possession of an undivided one-third share in the properties in suit—the share now in the enjoyment of the first defendant—jointly with the other defendants' possession over the rest."

The learned judge also made a direction that the plaintiff would get "his costs from the contesting defendants with interest at six per cent per annum."

It is against this decree that this appeal is directed.

DEFENCE COUNSEL'S STRICTURES "UNJUSTIFIABLE" AND "REGRETTABLE"

The learned counsel for the appellants in the early stages of the hearing before us thought fit to make strictures and criticisms, not only of the matter, but even the manner of the judgment, which, in our opinion, were altogether unjustifiable and regrettable.

In our view the learned judge expressed himself throughout the judgment in clear, concise and unmistakable terms and in admirable language. He has given his conclusions in a manner which indicates that so far as he was concerned, he was in no doubt whatever as to the genuineness of the plaintiff's claim.

We would only make one comparatively small criticism, and that as regards the terminology used in the judgment. In the course of the hearing of the appeal before us, there arose a great deal of avoidable perplexity, and indeed, confusion, with regard to the identity of witnesses, owing to the fact that the learned judge referred to some of them by titles only—such as “Raj Bahadur” and “Raj Sahib”, without specifying which of the several witnesses holding these titles he meant, and it is a pity that the learned judge, in the course of his judgment, lapsed into an unfortunate habit of referring to one and the same person in a variety of different ways. For example, even in a comparatively short section of the judgment one finds the first defendant denominated “Defendant No 1”, “Bibhabati Devi”, “Madhyam Rani”, “Mejo Rani”, and “Second Rani”.

The other defendants and many of the witnesses are also designated in diverse ways. One finds, too, the same defect in the evidence of many of the witnesses when they were referring to other witnesses or persons connected with the case.

For the sake of clearness as well as brevity we propose to adhere, as far as possible, to a uniform method of nomenclature.

The memorandum of appeal contains no less than 348 grounds of appeal, many of which relate to trivial and insignificant matters, but when stripped of all tautology, all the grounds of appeal fall within the very wide compass of ground No 345 which sets out that the “defendants challenge all and every finding of the lower court against the defendants”. Considering the number of the grounds previously set out, one cannot help feeling that the added statement that the “defendants have not gone into them individually in order to avoid prolixity” is definitely out of place and superfluous.

REAL QUESTION FOR DECISION IN THE APPEAL

The real question we have to determine is whether the learned judge in the court below was right in holding that the plaintiff is the second Kumar of Bhowal, or perhaps more accurately, whether his decision on this point is so manifestly against the weight of the evidence taken as a whole that it ought to be set aside.

POSITION OF THE APPELLATE COURT

There are numerous authorities dealing with the position of a Court of Appeal and the principles upon which it should act, when confronted with an appeal on mere questions of fact, and these authorities all seem to indicate that the decision of a lower court ought not to be interfered with, unless upon a searching review of all the evidence and the facts and circumstances of the case, the Court of Appeal is of opinion that the conclusions arrived at were “clearly wrong”. That this is the well-established rule was expressly accepted by the counsel on both sides.

It cannot be too strongly emphasized that dealing with an appeal in a case such as the present, where such a large number of witnesses were examined, the Court of Appeal is definitely at a disadvantage far greater than would obtain in other cases, by reason of the Court of Appeal not having seen the witnesses or had an opportunity of forming an opinion as to their veracity or reliability from their demeanour in the witness box and their

manner of giving their evidence. This applies with special force as regards the principal witnesses, such as the parties themselves and their immediate adherents.

It was a significant feature in the case that Bibhabati Devi and Jyotirmoyee Devi—although as Brahmin widows they would not ordinarily appear in public—came forward and gave their evidence in the presence of the learned judge instead of exercising the privilege of having their evidence taken on commission.

As previously mentioned, there were a large number of witnesses examined on commission, and of course, as far as these are concerned, the Court of Appeal is in quite as good a position to assess the value of their evidence as was the learned judge.

DISTINCTIVE FEATURES OF PRESENT CASE

In coming to a consideration of the questions for determination in this appeal, we think that at the outset it should be firmly borne in mind that as already mentioned, the present plaintiff, unlike the claimant in the well-known Tichborne case in England, did not in the beginning himself come forward to claim an estate, but admittedly did so eventually against his own inclination, after being persuaded by others to assume the position of a claimant, and then only after he had repeatedly and strenuously denied that he was any relation of Jyotirmoyee Devi, the sister of the second Kumar of Bhowal, and had denied that he had any connection with the Bhowal Raj at all. Moreover, again unlike the circumstances in the English case just mentioned and other cases of an analogous kind, the story put forward in this suit was not one based merely on a former disappearance or even a presumed death, but was based on an alleged re-appearance many years after a death and actual cremation said to have been witnessed by a large body of persons, who came and testified with great wealth of detail that they with their own eyes had seen the body of the second Kumar of Bhowal taken to a cremation ground and there reduced to ashes.

It follows, therefore, that the question whether the mind and body of the plaintiff are identical with those of the second Kumar of Bhowal is inextricably bound up with the antecedent questions whether the second Kumar in fact died and was cremated in Darjeeling in the month of May in the year 1909, and so, the value of the testimony given on the question of identity cannot be rightly judged in isolation, but must be considered in the light of antecedent events, and also of the explanations put forward to account for the lapse of time between the date of death and the declaration of identity, and the general conduct of all the persons concerned over the whole of the period between the year 1909 and the date of the suit.

APPELLANTS' CONTENTIONS IN BROAD OUTLINE

We think it will be convenient if we now proceed to indicate in outline the broad contentions put forward in the appeal.

Mr Chaudhuri arguing before us the case for the appellants epitomized the issues before the court by saying that the plaintiff claims to be the second Kumar of Bhowal, who, according to general repute, had died in the month of May in the year 1909 in Darjeeling and whose body was duly

cremated. The plaintiff's case was that the second Kumar did not actually die, but merely passed into a comatose condition on the evening of the 8th May, 1909, which condition was mistakenly presumed to be that of death, that the plaintiff's body was not cremated, and that the plaintiff himself is the second Kumar of Bhowal. The defendants' case on the other hand was that the second Kumar did, in fact, die, and that his body was undoubtedly consumed to ashes. The plaintiff, say the appellants, is not the second Kumar of Bhowal, but is an impostor. Both sides undertook to establish their respective cases by reference to the series of events which occurred in Darjeeling in the year 1909, and as regards "identity", they gave a large volume of evidence bearing particularly on that aspect of the case.

QUESTION OF IDENTITY ITS TRUE BEARING

Mr Chaudhuri conceded that as a general proposition and as a matter of logic, if in a case of the present description the identity of the claimant be conclusively proved, death and cremation would automatically be disproved. Putting the matter in another way, "identity" proved beyond all doubt would of itself override the improbabilities inherent in the plaintiff's story. That, however, presupposes the existence of indisputable and conclusive evidence of identity. Mr Chaudhuri argued that if there is no evidence of that character, or if no such evidence is found by the court to exist, and if the court nevertheless concentrates its attention on the question of identity, and treats the question of death and cremation as subsidiary questions, such a method of approach in dealing with the problem to be solved would be altogether erroneous.

Moreover, if, touching the question of identity, the court acts on evidence of a kind which no court ought to rely upon, namely, evidence purely of similarity or recognition by interested persons or persons who were obviously misled by circumstances, and if, after giving a "finding of identity" on such evidence, the court dismisses the positive evidence of death and cremation as being displaced by the finding of identity, and holds that the improbabilities in the plaintiff's case are similarly explained, and then on that basis the court fails to make a real independent examination of the evidence concerning death and cremation, the final decision arrived at is plainly vitiated by a fundamental error and ought not to be allowed to stand.

Mr Chaudhuri emphasized before us that that is what the learned judge has done in the present case. Mr Chaudhuri contended that, put quite shortly, nevertheless accurately, the ultimate decision of the learned judge comes to this that though all the other evidence of identity is inconclusive, there remain the recognition by Jyotirmoyee Devi and the acceptance of the plaintiff by the grandmother, Satyabhama Devi, on the basis of instinct rather than reason. Mr Chaudhuri complained that in the opinion of the learned judge, the recognition by these two ladies was sufficient to establish identity, and after reviewing the whole of the evidence in the case, disregarding points against the plaintiff, the learned judge ultimately based his decision on that.

Then having found identity in that sort of way, the learned judge did not really concern himself to examine and assess independently the value of the evidence of death and cremation and the improbabilities inherent in the

plaintiff's case, but held that every difficulty was sufficiently explained and met by his conclusions on the "question of identity" already reached

Mr Chaudhuri argued that this process of reasoning and the foundation of the findings arrived at by the learned judge can be traced out quite clearly by reversing the judge's order of dealing with the various topics and working backwards from the end of the judgment in other words, by taking section No (14) in the judge's classification first and then proceeding upwards through the other sections in the list

DARJEELING CHAPTER

With regard to the "Darjeeling Chapter", as it has been called in the course of the argument, Mr Chaudhuri submitted that five broad questions arose, concerning each of which there was a considerable amount of positive testimony. It was the duty of the judge, said counsel, to consider the evidence on these questions on its own merits together with the probabilities, and then to come to an independent finding. The five questions were as follows

- (1) Did the second Kumar really die, or was he merely in a comatose condition when his body was carried to the cremation ground?
- (2) When did the death or apparent death occur? Was it in the early evening as the plaintiff said, or at midnight as the defendants contended?
- (3) Was the second Kumar's body taken to the cremation ground on the night of 8th May, 1909, and was it cremated?
- (4) Having regard to the fact that the cremation of a body on the 9th May, 1909 was admitted, was that body the body of the second Kumar, or was it a substituted body?
- (5) Is the plaintiff's case as to his rescue by sannyasis and his life with them credible and true?

NO INDEPENDENT FINDINGS BY TRIAL JUDGE ON DARJEELING TOPICS

Mr Chaudhuri argued that the method followed by the learned judge in dealing with these questions was not to arrive at a straight conclusion of fact on the evidence given in the case, but merely to state some of the difficulties in the way of the plaintiff, and then to evade coming to a conclusion himself by saying that whatever the evidence on the defendants' side might be and whatever were the improbabilities in the plaintiff's case, they did not displace "identity". In other words, having found the plaintiff to be the same man as the second Kumar of Bhowal, any positive conclusions on the Darjeeling part of the case were unnecessary, and the plaintiff's case might be and must be accepted on the basis of his identity

"DEATH OR APPARENT DEATH"

In support of that analysis of the judgment Mr Chaudhuri referred us to various passages in the judgment. As regards the first of the five questions,

"death or apparent death", Mr Chaudhuri said that the conclusion of the learned judge was expressed thus "The fact that the body was left at the *sasan* (cremation ground) during the rain and disappeared is no proof that it was alive, and the real proof of that is that the plaintiff is the same man"

Mr Chaudhuri then said that the learned judge proceeded to refer to the evidence to show that the body was alive and winds up by saying "Nobody will accept this evidence, or accept it as proof of identity, if it were not otherwise proved, but granted the identity, there would be no reason to reject it"

Mr Chaudhuri accordingly said that ultimately, therefore, the ground of the finding arrived at by the learned is identity alone, and not any independent evidence of the life of the second Kumar having come to an end, or a mistake having been committed. According to Mr Chaudhuri, these matters are not discussed at all in the judgment

TIME OF "DEATH"

On the second question, that relating to the time of death, the learned judge did not make any sort of attempt to come to an independent finding that death took place at dusk. In this connection, Mr Chaudhuri referred to two passages in the judgment, namely, first "For indisputable facts point to and establish that the second Kumar 'died' or (was) taken as dead at between 7 and 8 P.M. on the 8th May. That is established by the following, not one of them, but all taken together"

The other passage in the judgment referred to by Mr Chaudhuri runs as follows "I have thus found that the facts connected with the *sasan*, or the shelters, or the rain, do not discredit the account given of what happened at the *sasan* on the night of the 8th May, if the body of the Kumar was taken there at night, as it must have been, if he had died at about dusk. The positive evidence that it was so taken is not discredited by these facts"

In neither of these passages does the learned judge even refer to the evidence on the defendants' side, whether oral, *e g*, the evidence of the defendant Bibhabati Devi against whom no charge of any kind was made, or documentary, *e g*, the telegrams and the entries in the Estate Books at Jardeb-pur. When at last the learned judge does come to discuss the documentary evidence, he seems to find that it is impossible to discard that evidence on its merits, or to make it fit in with death at dusk, so he extricated himself from the difficulty by again invoking identity, in these words "My conclusion on this topic is that nothing repels the conclusion touching the identity of the plaintiff with the second Kumar. That rests upon evidence, including marks which I have set forth, and which are admitted or incontrovertible"

Mr Chaudhuri said it follows that the basis of the learned judge's decision on this point also is ultimately "identity", and he said that the reasoning seems to be that since the plaintiff is the same man as the second Kumar, he could not have been cremated, and he could have escaped, only if he was taken to the cremation ground on the 8th May, and left unattended for a period of time, as he said. But he could not have been taken to the cremation ground on the evening of the 8th May unless apparent death occurred at dusk. Therefore, death did take place at dusk. There is no discussion of the positive evidence in the case, nor of the discrepancies in the evidence of the plaintiff's witnesses as to the hour of death. Mr Chaudhuri contended

that these witnesses are so inconsistent and contradictory in their evidence that it destroys each other

EVENING CREMATION AND ITS FAILURE

On the third question, namely, that relating to an evening funeral procession and the failure of cremation, the learned judge stated "The real test of the evidence touching this part of the inquiry is the hour of death, but of the witnesses who joined the funeral procession at night, or saw it pass, one might well rest on his own credibility, and another almost as good as he"

Then later the learned judge said that "this account, however consistent, will sound like a tale Its real security is the death at dusk, and the fact that the body was taken to the *sasan* that night This last fact might well rest upon the fact of death at dusk alone, or this coupled with the evidence of Padmini Babu, but there is besides other evidence of people who had seen the procession pass at night"

RAIN AND STORM

Finally, in considering the contentions of the defendants with regard to the question whether there was rain in the evening of the 8th May, and the story told by the persons, who said that they participated in the evening funeral, taking shelter, and the other facts connected with the cremation ground, the views of the learned judge are contained in the following passage : "I have thus found that the facts connected with the *sasan*, or the shelters, or the rain, do not discredit the account given of what happened at the *sasan* on the night of the 8th May, if the body of the Kumar was taken there that night, as it must have been, if he had died at about dusk The positive evidence that it was so taken is not discredited by these facts "

Mr Chaudhuri said that there are thus apparently two grounds for the finding on the question of evening procession and the failure of cremation, namely, (1) death at dusk, and (2) other evidence that the body was seen being taken down to the cremation ground that night But with regard to the witnesses who gave this other evidence, the learned judge makes the comment that "they would not be believed if death at dusk was not a fact, and if that was a fact, there would be no reason to disbelieve them"

Ultimately, therefore, said Mr Chaudhuri, there was only one ground for the finding of the learned judge on these particular points, namely, "death at dusk", and "death at dusk", as already indicated, had itself been based on identity The result, therefore, was that the whole finding as to the evening procession and failure of cremation was based on "identity"

BURNING OF SUBSTITUTED BODY

With regard to the fourth question, namely, that relating to the burning of a substituted body on the 9th May, 1909, the learned judge is most direct in his reliance on identity He says "The extreme improbability of this case is obvious, and its real answer is the identity of the plaintiff, and the fact, apart from this identity, that 'death' had occurred at a little after dusk and the body taken out at night, and that body never cremated But the

evidence on this point must be dealt with on the footing as if these facts have not been found"

Mr Chaudhuri complained that the "evidence on this point" was never really discussed, but only touched upon, as the learned judge mentioned only four out of thirty-five of the defendants' witnesses, disregarding the improbabilities altogether. "These facts" were not really found by the learned judge, but only inferred from "identity". It followed that the final conclusion arrived at was clearly arrived at and based upon "identity" alone, and nothing else. The learned judge said "The Kumar's apparent death occurred between 7 and 8, his body was taken to the *sasan* at about ten, and this body was never cremated. It is nobody's case, and Satya Babu says that it is not a fact, that this body was found and brought back and carried to the *sasan* the next morning. If the identity has been proved with mathematical certainty, it cannot be displaced by the cremation in the morning of a substituted body. Everybody appreciates its extreme improbability, but it cannot displace the identity"

The conclusion, therefore, simply is that since the plaintiff was the same man as the second Kumar, the body burnt on the 9th May, 1909, must have been a substituted body. The sole ground of the conclusion is "identity"

The learned counsel urged that the learned judge omitted altogether to consider the improbabilities, and the proper effect of his own finding that there was no conspiracy to kill the second Kumar and no deliberate poisoning.

RESCUE BY SANNYASIS

On the fifth question, namely, that relating to rescue by sannyasis and the plaintiff's life with them, the learned judge's conclusions were "His account reads like a fairy-tale, and if the plaintiff needed it to establish his identity, he would fail", and also, "but given the identity, otherwise proved, the account is clear and consistent", and lastly, "in any case the point is obscure, as I said, and I cannot say that the account is excluded by any fact clearly proved, or that anything in it displaces the identity, though it will not prove it"

With regard to the story of the wanderings with the sannyasis, the learned judge said "It discloses nothing that shakes the conclusion otherwise reached, and not on the strength of this account, that he is the same man as the Kumar". Then, "the answer is that from Darjeeling to this point the inquiry is not to establish identity, but to see if anything excludes it, the identity being established by other facts. If that is proved, there is nothing from Darjeeling to his arrival at Dacca that could shake the conclusion, and given the identity, there will be no reason to reject it on the ground that it involves a breach of a law of nature. It involves no such breach"

IDENTITY MADE THE MAIN BASIS OF DECISION

Mr Chaudhuri contended that looking at the passages in the judgment which we have quoted, one ought to come to the conclusion that on none of the points concerning events at Darjeeling and the story of wanderings with the sannyasis, is there any independent finding on the evidence which was given and the probabilities. Mr Chaudhuri crystallized his argument concerning the five broad questions which we have enumerated by saying

that the soundness of the learned judge's decision on the Darjeeling chapter depends on the soundness of his decision on the question of identity

TRIAL COURT'S TREATMENT OF QUESTION OF IDENTITY

Mr Chaudhuri conceded that if the decision of the learned judge on the question of identity had been one, which really rested on a proper foundation and could not be assailed, no objection could then be taken to the method employed by the learned judge and his reasoning. Throughout the learned judge's discussion of the Darjeeling chapter, said learned counsel, the learned judge constantly goes back to the conclusion of identity "otherwise reached." It was necessary, therefore, for counsel to deal with the way in which the learned judge came to the conclusion on the matter of identity. Counsel pointed out that the learned judge's first proposition is that "the question of identity is primarily a question of the identity of the body", to which is added the proposition that "the best proof of identity is recognition."

The plaintiff, said Mr Chaudhuri, is ignorant of things which the second Kumar was shown to have known, and might be expected to have known. The plaintiff explained that he had lost his memory as a result of arsenical poisoning, and he explains his difficulty with regard to the Bengali names by the existence of a cyst under his tongue, which, at one stage at any rate, he ascribes to the effect of arsenic. The learned judge nowhere in the judgment considers whether any credible reason—physical or psychological—has been given for the alleged loss of memory, or how such loss of memory could be reconciled with the plaintiff's complete recollection of events in the life of the second Kumar, as he claims to do, as contrasted with the plaintiff's ability to recognise a large number of persons, whatever may have been the conditions or at whatever age the plaintiff may have seen such persons previously. Instead of doing this, the learned judge relegates, what he calls, the mind of the plaintiff, to a secondary position and puts in the forefront the identity of the plaintiff's body. Mr Chaudhuri contended that there was no conclusive evidence of physical identity as between the second Kumar and the plaintiff, and he submitted that there was no need to elaborate or stress this point by reference to the evidence itself, because apart from recognition by Jyotirmoyee Devi and Satyabhama Devi, no other evidence has been found by the learned judge to be conclusive, or even to be evidence of anything more than a similarity. It is true that in certain places in the judgment the learned judge does speak of other evidence as establishing identity of the body, but when discussing that evidence, the learned judge rather hesitates to go beyond holding that the evidence does more than establishing similarity.

ANALYSIS OF EVIDENCE AS TO IDENTITY OF BODY

Mr Chaudhuri classified the evidence of *identity of the plaintiff's body* as that of the second Kumar under five heads

- (1) Recognition by Jyotirmoyee Devi, and to a certain extent, by Satyabhama Devi,
- (2) Recognition by tenants, relations and acquaintances,
- (3) Photographs,

(4) Marks, and

(5) General characteristics of the body

With regard to *recognition by tenants*, the learned judge says as follows : "It would be impossible to rest one's conclusion upon their testimony, unless the identity otherwise appears" It is clear, therefore, that recognition by tenants is not of itself relied upon

With regard to *recognition by relations and acquaintances*, the learned judge says "The denial by the Ram and the apparent and reputed death require the closest scrutiny into this case, * * * and the decision need not, as I said before, rest upon the credibility of witnesses alone, nor need this credibility depend upon their means and position alone, but upon whether it stands scrutiny, so far as it touches the points of distinction or agreement in mind or body, urged by the defendants or the plaintiff" Mr Chaudhuri in his argument said that the learned judge was not disposed to accept the evidence of this class of witnesses merely because they said they recognised the plaintiff, or test their evidence by examining whether they spoke correctly as to the features of mind and body, and so what the learned judge was doing was to act upon the identity of features, if that were established, and not merely on the opinion or assertion, taken alone, of these witnesses That that was the position appears from the following passage in the judgment "Fortunately the court will not have to decide between this mass of evidence and what evidence the other side have produced by the credibility of the witnesses alone There are the marks on the plaintiff's body and there are the photos"

Mr Chaudhuri argued that the field of discussion was stripped of recognition on the part of all the witnesses *except Jyotirmoyee Devi and Satyabhama Devi*, and the learned judge proceeded to consider whether he could rely upon (any "rocks" in) what he called a "morass" These are, the photographs and the marks on the body Concerning the *photographs*, the learned judge began by saying that "a photograph is not a map It is no use measuring this feature and that" He then says that the two photographs compared "are not on exactly the same scale", and their "angle of presentation" is different, yet according to Mr Chaudhuri he went on to measure and compare parts of the plaintiff's body from the photographs, and recorded certain conclusions, which are summed up in the statement made by the learned judge, "the photographs prove no difference in features, except a difference in the nose" Mr Chaudhuri says that this means that the learned judge found nothing more than similarity of features, as he saw them, and so he recorded a conclusion in a negative form to the effect that the photograph of the second Kumar is not so different from how the plaintiff appears as to show them to be two different persons Apart altogether from the correctness of the finding of the learned judge as to the various parts of the body, it is clear, said Mr Chaudhuri, that the learned judge did not find any evidence in the photographs which established the plaintiff affirmatively

There remained the question of the *marks* which the learned judge has described as "rocks in this apparent morass" Mr Chaudhuri's argument with regard to the marks is that the findings of the learned judge are of the same character as those on the photographs, and further, that such findings are vitiated by an additional error in that the learned judge assumes or arrives at identity, and then says, if the plaintiff be the second Kumar, then the marks found on the plaintiff's body must be the marks which the second Kumar himself had The learned judge tabulated his findings on each of

the marks or series of marks and dealt with them individually, and Mr Chaudhuri's criticism of the opinion of the learned judge with regard to the marks was that the learned judge assumed many things that he was required to find, and then he used the conclusion arrived at as if it were a premise, he does not accept and use the marks as evidence of identity. The learned counsel went so far as to argue that the photographs and marks "had disappeared into the morass"

With regard to the *general characteristics*, which is Mr Chaudhuri's fifth and last heading on the question of identity of the body, he said that the findings of the learned judge are not sufficiently definite as to carry the matter further by saying that they would not of themselves displace the identity of the plaintiff

Summing up the whole question, the learned counsel said that it is clear that leaving aside the recognition by Jyotirmoyee Devi and Satyabhama Devi, the learned judge did not treat any evidence as to bodily features as evidence satisfactorily establishing identity. On the contrary, he had assumed identity in order to explain a similarity which it was alleged on the part of the plaintiff did exist

IDENTITY OF MIND

The second part of the question of identity is the *identity of the mind*, and with regard to that, Mr Chaudhuri argues that the learned judge was even more inconclusive in his findings than in his findings on the question of identity of the body

On the question of *sports*, the learned judge said, "It has not been shown that the second Kumar's ignorance of these was less, or would be less today", and again, "I find that the plaintiff has not shown more ignorance in these sports than the second Kumar would do, if he were in the box", and Mr Chaudhuri's comment with regard to these was that this part of the learned judge's finding involves the probabilities of the story of loss of memory which the learned judge altogether ignored

Mr Chaudhuri made a grievance that certain observations were made by the learned judge in criticism of the manner in which the evidence given by the plaintiff himself was challenged in cross-examination such, for example, as the learned judge's comments that—"the cross-examination was just what a person minded to defeat the Kumar would design" "The rest of his mind they did not explore, and the only reason that I can think of is not fear of factitious knowledge, but of memory", and "He was afraid of falling into the truth" Mr Chaudhuri stated that the learned judge did not consider what counsel described as the "appalling ignorance" betrayed by the plaintiff in regard to things which the second Kumar undoubtedly knew

On the question of *literacy*, the learned judge said "The plaintiff is today what I would expect the second Kumar to be, so far as English is concerned"

On the question of *handwriting*, according to Mr Chaudhuri, the learned judge's view was that there was no independent comparison of signatures and no independent finding, but the finding is based on the fact that the plaintiff could sign his name, but did not know the letters, which would not be the case, if he had started learning after 1921, but would be probable,

if once knowing how to write, he had forgotten, and had only retained the memory of the signatures Mr Chaudhuri's criticism was that the learned judge did not consider why the plaintiff should have forgotten, and the fact that to teach the plaintiff to write would be dangerous, as he would develop a handwriting of his own, different from that of the second Kumar

The point made by Mr Chaudhuri seems to be that the learned judge does not find anything in the mind of the plaintiff which he accepts and relies upon as establishing identity. He only says that the plaintiff at the time of the trial showed himself to be what the second Kumar might be expected to be, that is to say, the learned judge only found a sort of similarity based on speculation, with the final conclusion that "nothing in the mind of the plaintiff shakes this conclusion", i.e., the conclusion already arrived at by the learned judge on the question of identity.

The learned counsel made a great point in the fact that as the plaintiff repeatedly made answer that he had forgotten, the most important question on that part of the case was the alleged loss of memory, and the probability of the cause given to produce such a loss of memory. There was no real consideration of this topic at all except a reference to a shell-shock case.

Mr Chaudhuri pointed out that towards the end of the judgment the learned judge, when referring to the *impediment of speech* from which the plaintiff suffers, overlooked the fact that this impediment was, according to the defendants, confined to his speech in Bengali, but does not affect the plaintiff when speaking Hindi, and the learned judge disposed of the impediment of speech by resting on the assumption of identity. Mr Chaudhuri pointed out that the learned judge says, "If it were impossible for such a thing to appear, it will go to identity" and that the Hindi tone could not "displace the conclusion as to identity reached after a full investigation".

IDENTITY "OTHERWISE REACHED" WHAT IS THE "OTHERWISE"?

Mr Chaudhuri stated that, in the course of the judgment, the learned judge often refers to the conclusion of identity "otherwise reached", and then criticises this by saying that the photographs, the marks, and the mental equipments having no value, what is this "otherwise"? And Mr Chaudhuri asked us to accept the view that all the various sections of the evidence with regard to recognition by Jyotirmoyee Devi and Satyabhama Devi remained, and accordingly the learned judge's "otherwise" on ultimate analysis resolves itself into recognition by them and nothing else. In support of this argument, he refers to a passage in the judgment where the learned judge says "It (i.e., recognition by Jyotirmoyee Devi) carries the plaintiff a great way, but a single point of difference, like death itself, or a different mind, or proof that he is not a Bengalee, might displace him altogether". Mr Chaudhuri said that his case was that there was no real independent examination or finding on any of the matters suggested in this passage as displacing the evidence of the sister and the grandmother, and so all that is left is recognition by Jyotirmoyee Devi, and he relied on two passages in the judgment in support of this part of his argument where the learned judge says, (1) "The sister's belief is honest", and (2) that the marks are to be taken "as a re-assurance", that is to say, corroboration.

JUDGE'S CONCLUSION - A VICIOUS CIRCLE

The conclusion arrived at by the learned judge on the question of the plaintiff's mind and body is summed up in a passage in these terms "I have examined so far the body and the mind of the plaintiff, feature by

feature, and seen nothing that displaces the identity proved by direct evidence of the kind stated, and by a collocation of indisputable features that cannot occur in a second individual", and arguing on this passage, Mr Chaudhuri said that it is obvious that the learned judge did not regard identity as proved by the bodily and mental features of the plaintiff, but simply finds nothing in those features to displace identity as proved by direct evidence. Mr Chaudhuri argues that this direct evidence must be something apart altogether from mind and body of the plaintiff, and could only be by recognition, and that as the learned judge had already said with regard to recognition by persons other than Jyotirmoyee Devi and Satyabhama Devi, its truth does not rest on their credibility but on the identity of body and mind, and at another place it is said, the court need not decide between the witnesses of recognition, but may go by marks and photographs, there was constituted a vicious circle—the correctness of recognition being made to depend on the identity of bodily and mental features, and such features then being said not to prove identity, but merely to corroborate identity already proved by direct evidence, which ultimately means recognition by Jyotirmoyee Devi.

The learned judge in summing up his final conclusion at the end of the judgment stated the identity of the body has been proved "to demonstration" and "with mathematical certainty"

Mr. Chaudhuri's comment on this was that the learned judge had forgotten that when dealing with the bodily features and marks, he did not hold that any of them was sufficient to prove identity, and on the other hand, held that either they did not displace identity, or that given the identity, they must be the same. So also with regard to the mental features, in that the learned judge said "Nothing in the mind of the plaintiff shakes this conclusion", and that, according to Mr Chaudhuri, is only taking them as being consistent with identity, and not as proving it.

Further, with regard to the Darjeeling chapter, Mr Chaudhuri argued that that part of the plaintiff's case was not properly examined by the learned judge in (the light of) the impossibilities attending it, and so also with regard to the ensuing events. Mr Chaudhuri argued that these impossibilities were explained away on an assumption of identity, and in support of that argument, he referred to a passage in the judgment where the learned judge said "Nothing that took place at Darjeeling could displace the conclusion, nor anything in the account given of the period of his disappearance"

On the general question of recognition, Mr Chaudhuri referred to passages in the judgment where the learned judge said, "I believe the direct evidence in support of the identity. It is the evidence of honest men and women." Then later on "But even this body of evidence need not rest on the credibility of the witnesses alone." Then again "If the sister is honest, the other witnesses must be equally so."

RECOGNITION BY JYOTIRMoyEE DEVI THE WHOLE FOUNDATION OF THE JUDGMENT

On broad lines, and not, of course, for the moment, considering the criticisms of individual witnesses who testified on behalf of the plaintiff, or any of the documents put in evidence, or the general facts and circumstances of the case, the argument put forward on behalf of the appellants comes to this—that refined down, the conclusion arrived at by the learned

judge on the question of identity, and so indeed the determination of the whole case, was based on honest recognition by the sister of the second Kumar, Jyotirmoyee Devi, and not also on physical resemblances or bodily marks, as wrongly stated, and questions of death, cremation, the improbabilities of the rescue story and the Hindusthani speech were all brushed aside by the learned judge, as being inconsistent with or militating against the conclusion "otherwise reached", that is to say, reached by reason of there having been recognition of the plaintiff by Jyotirmoyee Devi, and so, the only foundation—indeed the whole foundation—for the judgment is recognition of the plaintiff by a single individual, which, at the highest, only meant that the individual in question, that is to say, Jyotirmoyee Devi, was of the opinion that there was similarity in the external physical appearance of the plaintiff with that of the second Kumar

TWO-FOLD ONUS ON PLAINTIFF

In the course of his reply before us, Mr Chaudhuri pressed the point that in the suit the two-fold onus lay on the plaintiff he had, first of all, to displace a presumption of death and to prove that the second Kumar was not dead, and that (secondly?) as it was admitted that a body purporting to be that of the second Kumar was burnt on the morning of the 9th May, 1909, the plaintiff ought to be made to prove that the body which was burnt was not that of the second Kumar, but was some other body

The plaintiff made the case that his body was taken out on the 8th May, 1909, and that after his reappearance in the year 1921, people recognised him as being the second Kumar, so that, the main features in the issue (*sic*) are—was the second Kumar's body taken out on the evening of the 8th May, 1909, as the plaintiff said, or was it, as the defendants said, taken out on the morning of the 9th to be cremated?

ADMITTED MORNING CREMATION ITS EFFECT ON PLAINTIFF'S CASE OF EVENING CREMATION

The plaintiff at the trial gave evidence going to show that there was an evening funeral procession, but he admits that there was a morning cremation of a body purporting to be that of the second Kumar

Mr Chaudhuri urged that in coming to a conclusion as regards this fact in issue, the court was not only considering the evidence adduced by the plaintiff as to the events of the evening of the 8th May, but also the admitted fact of the morning cremation, which, if it really related to the body of the second Kumar, must necessarily destroy the plaintiff's evidence as to the evening funeral. The admitted existence of a morning cremation is a factor which cannot be left out in coming to a decision on the plaintiff's case as to the evening procession. It is a factor definitely going against the possibility of the truth of the plaintiff's case. Accordingly, Mr Chaudhuri stated that the morning cremation must be considered along with the evening procession. The two funerals cannot be kept separate or considered in water-tight compartments

Having regard to the fact that the morning cremation was admitted by the plaintiff to have been to all outward appearances that of the body of the second Kumar, and understood by all concerned so to be, the plaintiff in order to succeed would have to prove why despite external appearances

the morning cremation should not be taken to be that of the body of the second Kumar himself, and how it can possibly and indeed reasonably be (not?) so taken

The plaintiff's case raised the question that things were not what they seemed, and that, therefore, it lay upon him to give an explanation why the reality was something different from the appearance. The admitted morning cremation, so long as it remains unexplained, destroys the evening cremation, because it was no one's case that the same body taken out in the evening was brought back again and taken out a second time in the morning. The plaintiff, therefore, ought to have shown—or at any rate have explained—how it was possible to procure another body in the course of the night, and to induce in the minds of those who had taken part in the morning cremation the belief that the body so obtained was the actual body of the second Kumar himself.

Mr. Chaudhuri argued that the plaintiff was not in a position to ask the court to come to the conclusion that the story of the evening cremation is true, because the existence of the morning cremation stands in the way of a finding in favour of evening cremation, so long as the plaintiff does not remove the obstacle which the existence of the event necessarily constitutes.

NO EVIDENCE GIVEN OF A SUBSTITUTED BODY IN MORNING CREMATION

Mr. Chaudhuri urged that the plaintiff ought not to have succeeded in the suit, because no evidence was given that the body carried in the morning procession, and admittedly duly cremated, was not that of the second Kumar. No evidence was given that another body was, in fact, procured, or how it could have been procured, and no evidence of the bringing into the house "Step Aside" of any body which could be passed off as that of the second Kumar. Mr. Chaudhuri took it upon himself to remind us that the evidence proving the fact is relevant, and that the evidence disproving the fact is also relevant. The fact can only be discarded on cogent grounds. Thus it is not possible to consider the evening cremation story taken by itself, as the morning cremation is a fact relevant to it. He added, however, that even if the evening and morning cremations could legitimately be treated separately, the question whether there was an evening procession, or whether, on the other hand, the body carried out for cremation in the morning was that of the second Kumar, are questions both of which must be decided on the balance of probabilities.

BALANCE OF PROBABILITIES

Looking at the matter in this way, that is to say, on the question of probability, Mr. Chaudhuri argued that if the two cremations are, so to say, evenly balanced, the court ought to decide in favour of the appellants, because there is one element to be taken into consideration which is decisive. Mr. Chaudhuri put it in this way. The plaintiff admits that the body in the morning cremation purported to be that of the second Kumar. A number of witnesses swore that they actually saw the face of the corpse and testified that it was that of the second Kumar, and these witnesses said that the body, the face of which they saw,

was actually burnt to ashes, and that all the customary rites and ceremonies were performed at the time. Not a single witness said that the body so burnt was not that of the second Kumar. No evidence at all was given on the plaintiff's side that it was not the body of the second Kumar.

RESPONDENT'S CONTENTIONS IN BROAD OUTLINE

We now proceed to give, generally, in broad outline the case for the plaintiff respondent as put before us by Mr Chatterjee in the appeal.

Mr Chaudhuri had argued that the learned judge had inverted the order of the two main parts of the case, namely, the Darjeeling chapter and the Recognition or Identity chapter, with the result that the learned judge had fallen into the error of permitting his determination of the matters connected with the Darjeeling chapter to be unduly influenced by the findings already arrived at by him in connection with the other chapter.

INDEPENDENT EXAMINATION OF DARJEELING CHAPTER

Mr Chatterjee, on the other hand, argued that Mr Chaudhuri had laid a far greater emphasis on the value of identity as the deciding factor in the case than the learned judge had actually permitted himself to do. Mr Chatterjee urged that the learned judge had, in fact, adopted a far stricter attitude than Mr Chaudhuri had suggested, because after coming to a conclusion on the question of the identity of the second Kumar, and taking the view that this had been demonstrated with almost mathematical certainty, the learned judge categorically stated that even his finding on those lines would not induce him to decide the suit in the plaintiff's favour unless he was also fully satisfied, on quite independent evidence, that the second Kumar did not die in Darjeeling. In this connection, Mr Chatterjee referred us to a passage in the judgment where the learned judge said "The plaintiff, therefore, must be the second Kumar himself, unless it appears that he had died at Darjeeling, or that his mind is different, or that his handwriting is different, or that he is not a Bengalee * * * *". It is quite clear, said Mr Chatterjee, from the general scheme of the judgment that the learned judge did set himself to investigate, and come to a decision on its own merits upon, every one of the points mentioned in that passage, apart altogether from the question of identity. Had the learned judge chosen to follow the procedure that Mr Chaudhuri said he did, he might very well have said, after coming to his findings with regard to physical and mental identity, that the cremation and death in Darjeeling, alleged by the defendants, were automatically disproved.

REAL BASIS OF FINDING ON IDENTITY

Further, Mr Chatterjee stressed before us that even as regards the question of identity, the learned judge did not base his finding on mere evidence of similarity, or of recognition given by interested persons, or of persons, who had been deceiving themselves, and who had been misled by others. The learned judge, Mr Chatterjee submitted, deduced his finding on the question of identity on the basis primarily of the physical

identification of the plaintiff's body with that of the second Kumar. That this is so appears from the following passage in the judgment: "Another test, in itself conclusive, is the identity of the body proved to demonstration, and with mathematical certainty, by the bodily features, all exceptional, and by the bodily marks, all exceptional, which rest on nobody's credibility. These, in their totality, cannot occur in a second individual, and even if half of the marks go off, the scaly feet, and the irregular scar on the top of the left outer ankle, coupled with the bodily features, will be enough to sustain the identity with equal certainty. An individual is a collocation of accidents that never recurs, and that makes it or him unique."

The learned judge's finding on the question of identity was, in the second place, based on mental identification as between the plaintiff and the second Kumar, which Mr Chatterjee asked us to accept as being entirely conclusive, and in this connection, he refers us to the passage in Cockburn, C J's charge to the jury in the Tichborne case which runs thus: "Between twin brothers and twin sisters we know the likeness is sometimes such as to baffle observation * * * but no two men were ever alike within. Supposing even that the faculties of the mind, the moral propensities, the instincts were originally the same in the two twins, the minds and the memories would very soon cease to be the same, for since the creation of man, no two lives were ever the same, and therefore, no two memories can ever be the same."

RECOGNITION BY JYOTIRMOYEE DEVI NOT THE ONLY BASIS

Mr Chatterjee submitted that it was not a fact that the learned judge based his finding of identity on the recognition by Jyotirmoyee Devi, or that of the grandmother Satyabhama Devi. Mr Chatterjee went so far as to say that the learned judge has actually done the reverse of this, as appears from a passage in the judgment where he says: "Honest belief even in a sister is not conclusive, though it demolishes the utter dissimilarity theory. It undoubtedly carries the plaintiff a great way, but a single point of difference, like death itself, or a different mind, or proof that he is not a Bengalee, might displace him altogether", for, in that passage the learned judge distinctly states that honest recognition by Jyotirmoyee Devi is not conclusive—that merely served to demolish the "utter dissimilarity" put forward on the part of the defendants. Mr Chatterjee sought to counter Mr Chaudhuri's attack on the judgment on this point by saying that Mr Chaudhuri's oft-repeated statement that the learned judge's finding of identity was founded on recognition by Jyotirmoyee Devi was merely a vain cry and entirely without substance, and that the same might be said with regard to Mr Chaudhuri's reference to the recognition by Satyabhama Devi as being merely a matter of instinct. The learned judge did not put any higher value on the recognition by Satyabhama Devi than that of Jyotirmoyee Devi, and did not seem to draw any conclusions from such recognition further than that it established similarity, and destroyed the defendants' theory of dissimilarity. Mr Chatterjee said that the plaintiff might well have had a grievance, if the learned judge had actually subjected him to tests far stricter and far larger in number than indeed he should have done, because it would be quite legitimate for him, the plaintiff, to contend that honest recognition of him as the second Kumar, and acceptance of him by Jyotirmoyee Devi and Satyabhama Devi and other relatives, in circumstances as were proved in the course of the case, established both his physical and his mental identity with the second Kumar beyond all reasonable doubt.

NOR MERE OPINION EVIDENCE

Moreover, asserted Mr Chatterjee, the learned judge did not find identity on "opinion evidence" only, for he dealt not only with the opinion evidence of the witnesses, but considered the evidence given as to the mind of the second Kumar and that of the plaintiff, and the learned judge also examined the handwriting of the second Kumar and compared it with that of the plaintiff, and it was only after doing these things he came to the conclusion that the plaintiff was none other than the second Kumar

DARJEELING CHAPTER CONSIDERED APART FROM IDENTITY

Mr Chatterjee was very insistent that Mr Chaudhuri was not right in declaring that there was no independent finding as regards the Darjeeling chapter, and Mr Chatterjee urged that upon an examination of the judgment as a whole, it would be found that what the learned judge really did was to examine the evidence relating to the events in Darjeeling quite independently, and then to arrive at a finding upon the evidence which was given

Mr Chatterjee pointed out that in dealing with the Darjeeling chapter the learned judge begins by setting out the case of each side respectively and the lay-out of the house "Step Aside" and the topography of the cremation grounds

ILLNESS OF SECOND KUMAR

The learned judge fully dealt with the question of the illness of the second Kumar, and with regard to this, he said "On the side of the plaintiff there is no evidence going to the illness, except that of the plaintiff himself", and therefore, said Mr Chatterjee, the learned judge arrived at his finding on the question of illness on the evidence (given) by witnesses on the side of the defendants taken in conjunction with the evidence given by the plaintiff himself. The learned judge, if anything, said "It was never the case of the plaintiff—nobody had ever suggested it—that he had died at midnight, or that he had died, but was revived by a charm, or that anybody had burnt the wood without the body. His case, as it is and *prima facie*, is absurd." Mr Chatterjee argued on the basis of this statement that the learned judge, although he ultimately found in favour of the plaintiff on the question of identity, kept an open mind when he examined all the evidence critically and carefully. In dealing with the evidence of illness of the second Kumar, the learned judge said "I am investigating the matter just to find out, whether the Kumar had died, or been taken for dead, and carried to the burning ground, and whether a true account as to the time of death is being given, or whether the evidence points to dusk, or a little after dusk, as the time of death." Then, after discussing the evidence concerning the illness in great detail, he said "The point now is whether the second Kumar died at midnight, or at a little after dusk. For the requirements of this case that is the vital issue, for if he had 'died' at midnight, the whole story of his being out at about 9 P M for cremation becomes a 'tale'."

HOUR OF "DEATH" AND EVENING PROCESSION

Finally, the learned judge found that death had occurred "between 7 and 8 P M." Mr Chatterjee relied upon this as constituting a finding in no way

dependent on identity In dealing with the question of the evening procession, the learned judge said that "this account, however consistent, will sound like a tale", and he accordingly discussed the evidence critically, and and he makes his finding, with regard to the evening procession, dependent upon the "death at dusk", concerning which he had already arrived at a clear and independent finding Upon the question as to whether there was rain on the evening of the 8th May, the learned judge says "This rain, the night before, would, coupled with other facts, carry the plaintiff's case the whole way, but it is necessary to consider in a little detail the three things that were urged as discrediting the night procession, and its sequel. It rests, as I said, on the firm ground—the 'death' after dusk, but still the things urged should be examined", and then the learned judge proceeds to examine in great detail the points put forward by the defendants and comes to an independent finding on each of the three points, namely, the cremation ground (*sasan*), (the shelters) and the rain

MORNING CREMATION

Subsequently, the learned judge discussed the question of the morning cremation, and Mr Chatterjee, in arguing with regard to this, referred to the passage in the judgment, mentioned by Mr Chaudhuri, where the learned judge said this "The case of the plaintiff is that the body was not that of Kumar at all, but some other body secured in the course of the night, and was seen, and carried completely covered up, and burned at the *sasan* without a single rite The extreme improbability of this case is obvious, and its real answer is the identity of the plaintiff, and the fact, apart from this identity, that 'death' had occurred at a little after dusk and the body was taken out at night, and that body never cremated" Although in this connection the learned judge does mention identity, but he nevertheless discusses the evidence quite independently of that, and he says "the evidence on this point must be dealt with on the footing as if these facts have not been found"

Thereupon the learned judge examined in considerable detail each of these points the route taken by the procession, the covering up or otherwise of this corpse, the question of whether the body was upstairs or downstairs, the presence or otherwise of the lady named Kasiswari Devi at "Step Aside" on the morning of the 9th May, 1909, and the coming of Dr Pran Krishna Acharyya that morning

With regard to these points, Mr Chatterjee contended that Mr Chaudhuri had endeavoured to show that the learned judge had found that on the morning of the 9th May, 1909, the body was upstairs, and for this purpose Mr Chaudhuri referred to a passage in the judgment which is as follows : "The evidence before me is very clear—that the body was brought down the stairs " Mr Chatterjee pointed out that the passage thus relied upon does not bear out Mr Chaudhuri's contention, because the learned judge was merely discussing the evidence on a finding which he really arrived at and which is in these words "I find that Basanta Babu and Onkarananda Swami spoke the truth The body was covered up, and carried in procession, and burnt as quickly as possible without a single rite I rest the conclusion on the single fact—that the Kumar had died at a little after dusk, and an examination of the evidence touching the proceedings on this day confirms that conclusion otherwise reached"

The finding that the second Kumar died after dusk was itself an independent finding, said Mr Chatterjee, arrived at without reference to identity at all. Thereafter the learned judge considered the documentary evidence bearing upon the question whether the death of the second Kumar took place at midnight, as alleged by the defendants, and the conclusion he arrives at on this point is contained in the statement, "But all these facts are swept away by the facts which I gave, which show that the apparent death was at night, and the body was taken out at night"

DEFENCE FAILURE TO DISPROVE IDENTITY BY PROOF OF DEATH AND CREMATION

Mr Chatterjee then said that this disposed of the three important points, namely, "death at dusk", the body taken out at about 9 P M and the "morning procession", and Mr Chatterjee said that then the learned judge put together all the matters on which he had already arrived at a finding, and expressed the opinion that the conclusion which he had previously arrived at on the question of identity was not in any way affected by these other facts. In other words, he takes himself back to the position he had adopted with regard to the identity of the plaintiff's body with that of the second Kumar, and then finds that the conclusion he had arrived at on this topic remained unaffected, inasmuch as after a wholly independent examination of the facts concerning the events in Darjeeling, he had arrived at the finding that the second Kumar was taken to be dead at some time near about dusk, and his body was carried to the cremation ground the same night, but was not burnt. It seems clear, therefore, that what in essence was the view which the learned judge was adopting was that the attempt made on the part of the defendants to disprove identity by showing that the body of the second Kumar was cremated had not been successful.

Mr Chatterjee suggested that one might, without doing any violence to the judgment, or injustice to the learned judge, transfer in its entirety the section of the judgment relating to Darjeeling, and put it forward, and incorporate it in the earlier part of the judgment where the learned judge deals with the going of the Kumar to Darjeeling and briefly states that the second Kumar "died or apparently died, on the 8th May, at between 7 P M and 8 P M or 11-45 at night. The next morning took place the funeral procession, genuine or faked"

Were that to be done, the judgment would be no less intelligible, though it would be less open to the kind of criticism made on behalf of the appellants. The learned judge could still have stated at the end of his discussion of the events in Darjeeling that "the Kumar's apparent death occurred between 7 and 8, his body was taken to the *sasan* at about ten, and this body was never cremated. It is nobody's case * * * that this body was found and brought back and carried to the *sasan* the next morning. If the identity has been proved with mathematical certainty, it cannot be displaced by the cremation in the morning of a substituted body. Everybody appreciates its extreme improbability, but it cannot displace the identity"

FINDINGS ON DARJEELING CHAPTER

Reviewing the evidence in that kind of way, Mr Chatterjee, therefore, submitted to us that the findings of the learned judge in connection with

the Darjeeling chapter cannot be challenged upon the basis that those findings were not independent. What the learned judge really did amounts to this: he finds in connection with the Darjeeling chapter (1) apparent death at dusk, (2) body taken out in the evening, (3) body placed on the cremation ground, (4) desertion of the body, owing to onset of rain, by the persons attending the funeral and their taking shelter in near-by places, and (5) the body missing on their return. That this was the position appears from the passage in the judgment which we have just quoted.

The learned judge also finds that the morning cremation was carried out under suspicious circumstances, and that the body could not be the body of the second Kumar. He then proceeds to consider the evidence concerning the body which was missing, and he accepts the evidence of the witness—Darsan Das sannyasi, said to have been one of the rescuing party, and so comes to the conclusion that the sannyasis did rescue from the cremation ground in Darjeeling the body of the plaintiff which was in a comatose condition. The learned judge then found the identity of the body which was rescued by the sannyasis to be the body of the second Kumar. It was only in connection with the story of the rescue that identity was referred to by the learned judge, and this, said Mr Chatterjee, was a logical necessity.

Mr Chatterjee says that quite inaccurately has Mr Chaudhuri contended that the learned judge did not refer to the evidence on the defendants' side, either oral or documentary, for, actually the whole of the finding as to the cause of the illness is based on evidence given by the defendants. He has considered the evidence of the witness Fakir Roy, on whom the defendants particularly relied, the defendants' evidence as to the cremation ground and the possible shelters, and the evidence with regard to rain. It is not correct to say that the learned judge has not referred to the evidence of the defendant Bibhabati Devi. This is dealt with in several passages in the judgment, and he ultimately makes the comment that "although the case put into the mouth of the second Ram has been constructed with some skill * * * it breaks down by reason of the single fact which I consider unshakable that the Kumar apparently died between 7 and 8 P.M."

With regard to the admitted funeral procession on the morning of the 9th May, 1909, the learned judge fully dealt with the evidence given on both sides.

RESPONDENT'S ANSWER TO GENERAL CRITICISM OF JUDGMENT

To sum up the argument advanced by Mr Chatterjee on behalf of the plaintiff respondent in answer to the appellants' general criticism of the judgment: the argument amounts to this: that the judge did fully and adequately and quite independently give a critical and close attention and consideration to all the evidence given as regards the Darjeeling chapter, and in no way relied upon or used, for the purpose of arriving at his findings concerning the events in Darjeeling, the finding already arrived at by him upon the question of identity, save only in connection with, and for the purpose of, testing the likelihood of the story of rescue of the second Kumar from the cremation ground.

MISREPRESENTATION OF JUDGE'S VIEW ON PHYSICAL IDENTITY

When Mr Chatterjee was discussing the question of how the learned judge dealt with the matter of "identity" of the body, he complained that counsel for the appellants had not represented fairly the method followed by the learned judge, in that upon an adequate view of those parts of the judgment where the learned judge sets out his process of reasoning and his findings, it would not be right merely to pick out the sentence used by the learned judge where he says that "the question of identity is primarily a question of the identity of the body". One must consider the context in which that sentence occurs, and upon looking back over the argument leading up to it, one finds that the learned judge was discussing the cross-examination of the plaintiff, and he expressed the opinion that this "did not go, except almost normally, to the memory of the Kumar as distinguished from his supposed general knowledge, such as would be possessed by any person with ordinary education". The learned judge pointed out that counsel for the defendants explained that the plaintiff had "ample time to be thoroughly primed, which, no doubt, is a fact, and that he, counsel, was not going to fall into a trap". The learned judge then says "It might be said, therefore, that practically speaking, the plaintiff was asked nothing going to the Kumar's memory, except a few questions which he answered, as will appear below, correctly, all but one, and most of these questions, except those necessary to put to him the letters which the second Kumar is said to have written to his wife, merely touched what might have been the Kumar's memory, and it looked like nibbling at it, and running away directly the answer exposed the trap". The learned judge said that "full justification for the remarks will appear when I go into the cross-examination, but supposing it goes for nothing, and supposing the second Kumar was as ignorant as this man, he, the plaintiff, is not he, unless his body is the same, and the question of identity is primarily a question of the identity of the body. One identifies a dead man, or a mad man, but where a question as to identity has arisen, and there is conflicting evidence on the point, one would look to the mind, as individual as the body, and impossible to confound with another, if sufficiently searched. Where, as in this case, the mind is deliberately left unexplored on the theory that tutoring has put into the plaintiff the entire store of the Kumar's memory, and no skill could show it factitious, the body becomes the principal consideration, unless of course the Kumar was educated, or educated even to an extent that could not conceivably lapse to the plaintiff's plight, or unless the Kumar had such knowledge as the defendants impute". The learned judge was, therefore, pointing out, not by means of a proposition which would be of universal application, but by a proposition apposite in the circumstances of this particular case, that in his opinion the cross-examination of the plaintiff had been of such a character that it did not explore his mind sufficiently. It was for that reason that the question of physical identity became the principal consideration.

Mr Chatterjee urged that the learned judge had adequately and accurately formulated the problems which he had to consider. The learned counsel did not object to Mr Chaudhuri relying on the statement of the learned judge that the best proof of identity is recognition, because—as he said—undoubtedly a man is identified primarily by recognition, which merely means certain similarity of features. Mr Chatterjee argued that the learned judge adequately dealt with this particular point, and had based his opinion not only on the

marks and features which he said were identifying marks, but also with regard to other characteristics, such as voice and gait

ABSENCE OF EXPLANATION FOR LOSS OF MEMORY OR CYST NOT MATERIAL

In reply to Mr Chaudhuri's criticism that the learned judge had nowhere found any credible reason for the plaintiff's alleged loss of memory, or explained how that could be reconciled with the plaintiff's complete recollection of events in the life of the second Kumar, Mr Chatterjee agreed that nowhere has the plaintiff given or professed to have been able to suggest any explanation of how his memory was lost, and nowhere does he say that the loss of memory was due to arsenical poisoning, and as regards the cyst under the plaintiff's tongue, the plaintiff may have been under the impression and may have told certain people that this cyst was due to poisoning, but whether he was right or wrong in so thinking had no real bearing on the question of his identity. The fact remains that he did have a cyst under his tongue, and the doctors called on behalf of the plaintiff did say that a growth of this description would necessarily tend to impede articulation. Mr Chatterjee pointed out that the learned judge does discuss the question of the loss of memory, and comes to a definite finding on this in words of no uncertain quality. He says "In short there is no law by which you can exclude the plaintiff's account, as you can exclude his flying in the air by gravitation." In other words, it appears, that the learned judge was of the opinion that the plaintiff had suffered from loss of memory, though he did not in terms deal with the explanation for that phenomenon.

EVIDENCE OF RECOGNITION DULY CONSIDERED

Mr Chatterjee challenged Mr Chaudhuri's contention that the plaintiff displayed an ability to recognise everybody in whatever condition or whatever age he might have seen them in the days gone by. Mr Chatterjee says that a part of the evidence showed that there were some persons whom the plaintiff could not recognise, and the learned judge referred to this by saying that "one witness for the defendants admitted in cross-examination that the plaintiff, asked if he knew visitors, would say 'Yes' to those he knew, and 'No' to those he did not know." The learned counsel for the respondent sought to refute the contention put forward on behalf of the appellants to the effect that there was no conclusive evidence of the physical identity of the plaintiff compared with that of the second Kumar, and pointed out that there were a large number of witnesses who are relatives of the second Kumar, some of whom had known him from infancy and gave evidence of a definite character identifying the plaintiff as the second Kumar. It is altogether wrong, said Mr Chatterjee, to argue that the learned judge was not disposed to accept the evidence of this class of witnesses otherwise than upon the basis that the plaintiff had recently been recognised by Jyotirmoyee Devi and Satyabhama Devi, and, therefore, the witnesses must have been influenced by their opinion. The learned judge, says Mr Chatterjee, correctly laid down the rule that—"The Court will have to look to the quality of the evidence on either side—the credit of the witnesses, their position, education, power of observation, how far they recollect the Kumar, any reason they have for telling an untruth, any proved falsehood

in their evidence uttered to support such a case", and further, any facts in themselves incontrovertible in the whole mass of evidence, which the learned judge describes as "the rocks in this apparant morass" The learned counsel for the respondent argued that all this showed that the learned judge set himself the task of considering and appraising all the evidence, and is not influenced merely by the number of the witnesses called In brief, the learned judge has fully taken into consideration the quality as well as the quantity of the evidence adduced

PHOTOGRAPHS

With regard to the photographs, Mr Chatterjee did not quarrel with Mr Chaudhuri's contention in regard to these on the contrary, he agrees with the fact that the learned judge does not rely on the photographs except for certain particular features, and accepts the position that the photographs in themselves would not prove identity, but only, at the most, enable it to be said—looking at the photographs of the second Kumar—that there is nothing in them which demonstrates that the plaintiff could not be the second Kumar

IDENTITY NOT ASSUMED IN CONSIDERING MARKS

Mr Chatterjee argues that it is altogether wrong to say that when dealing with the question of the marks, the learned judge assumed identity when considering the more important marks, namely, the scaly feet and the scar over the left outer ankle The learned judge, in fact, discusses these marks in considerable detail, and then as regards the scaly feet, came to the finding that "the second Kumar had this fish-skin on his instep and ankle just as the plaintiff has it, and the father of the second Kumar and the other persons named by Jyotirmoyee Debi, including herself, had or have it too" As regards the scar over the left ankle, the learned judge said "There can be no doubt whatever that this is the mark on the plaintiff—was seen by the insurance doctor on the 2nd April, 1905, when the Kumar appeared before him—unless anything displaces the identity of the man"

IDENTITY OF MIND FULLY DISCUSSED

With regard to the "identity of mind", Mr Chatterjee urged that the evidence as to this was elaborately and sufficiently discussed by the learned judge, and he has given his conclusion by saying "It is enough for me to find now, as I do, that assuming that the second Kumar was illiterate in the sense I stated in 1909, and allowing for the lapse that might occur in bare literacy, the mind of the plaintiff, so much of it as the defendants cared to reveal to me by their cross-examination, is not different from what would be the mind of the second Kumar today The rest of his mind they did not explore, and the only reason that I can think of is not fear of factitious knowledge, but of memory"

SUMMARY OF MAIN ARGUMENTS ON EITHER SIDE

The main arguments, on broad lines, therefore, put forward on behalf of the appellants and the respondent, respectively, come to this that on the

one side, it will be seen that the learned judge did not deal with the case as one whole, sufficiently realising that one part of the case is in a sense dependent on the other part of the case, and that the question of the events after the plaintiff's reappearance at Dacca in the year 1921 ought to be considered in relation to and in the light of the events in Darjeeling in the year 1909. The appellants challenged the judgment on the ground that in dealing with the Darjeeling chapter, the learned judge has allowed himself to be unduly swayed by the conclusions arrived at by him concerning the question of identity, and that even as regards this question, the reasoning of the learned judge is unsound.

On the other hand, the respondent says that the learned judge did accurately examine all the evidence concerning the Darjeeling chapter quite independently of his previous findings, and that upon the question of identity, whether of body or mind, he has not made any unjustifiable assumption, such, for example, as the honesty of Jyotirmoyee Devi, but has arrived at his findings after a full and proper examination of the evidence touching each of the points for consideration.

PROPER ORDER OF TREATMENT INDICATED

Before coming to an examination of the case as presented in the appeal, it will perhaps be convenient to indicate the method of approach which it seems convenient to adopt, particularly having regard to the criticisms directed against the order in which the learned judge dealt with the main aspects of the case. We think it not only convenient, but highly desirable in the circumstances, to deal first of all with what we will call the "Darjeeling Chapter", and under that heading there will have to be considered the illness of the second Kumar, the cause of his death or apparent death, and the time of death, and whether or not there was any conspiracy of the kind suggested by the plaintiff.

In connection with this, it will be necessary to deal with the evening cremation, and in connection with that, the evidence of the various witnesses as to whether or not there was rain on the night of the 8th May, 1909, and the story of rescue.

Then, there will have to be considered the morning cremation, and under this heading fall the questions whether there was a substituted body, whether it was covered up or not, and the manner in which it was burnt.

It will then be necessary to consider the intervening period, that is to say, the period between May, 1909, and the early part of the year 1921. On the one hand, there is the plaintiff's story of his wanderings and the reasons given by him for his return to Dacca, and on the other hand, certain events which occurred during that period in Jaidebpur.

We shall then have to consider the alleged recognition by Jyotirmoyee Devi, Satyabhama Devi and by other relatives and acquaintances.

Then, there is the question of identity of the plaintiff viewed from two aspects, namely, identity of body, including the marks and photographs, and identity of mind, including the literacy or otherwise of the plaintiff as compared with that of Ramendra Narayan Roy.

Finally, on the question of the general aspect of the case, something must be said as to whether the plaintiff is a Punjabee, as alleged by the defendants, or is a Bengalee.

I shall say something also on the question of delay.

PART I

DARJEELING CHAPTER

It will be seen that The case, broadly speaking can be divided into two main parts, namely,—the Darjeeling Chapter and Identity

Mr Chaudhuri, for the defendants-appellants, quite early in his argument before us, stressed and rightly stressed the point that if Ramendra Narayan Roy, in fact, died and was cremated at Darjeeling in the month of May, 1909, that alone would be sufficient to entitle the defendants to a decision in their favour. The learned trial judge was fully alive to the paramount importance of this point, as is shown by the passage in his judgment where he says "The point is whether the Kumar had died at Darjeeling. That requires investigation into the cause of the alleged death, and whether it was natural or violent, supposing it had taken place, it would mean an end of the plaintiff's case"

Mr Chaudhuri, whilst relying primarily on his argument that the court ought to hold that Ramendra Narayan Roy did die and was duly cremated, quite rightly made the further point that even if Ramendra Narayan Roy had not been cremated at Darjeeling, but had somehow escaped and wandered away, whether in the company of sannyasis or otherwise, it by no means necessarily followed that the plaintiff is himself Ramendra Narayan Roy. The plaintiff would still have to prove affirmatively that he and Ramendra Narayan Roy were one and the same person. In other words, cremation by itself would be fatal to the plaintiff, but non-cremation by itself would not be fatal to the defendants

Mr Chaudhuri maintained that whilst cremation absolutely negated identity, identity as found by the learned trial judge does not negative cremation, and so Mr Chaudhuri complained that the learned judge, instead of discussing all the elements in the case, and coming to definite findings as regards the matter of cremation, had allowed his view on this part of the case to be coloured by his findings on the subject of identity, and the learned judge had been prejudiced, or at any rate influenced, in coming to his decision as regards the Darjeeling chapter by the findings previously arrived at by him on the question of identity

CONSPIRACY CHARGE

It is to be observed that the plaintiff has made his claim upon the definite basis that Ramendra Narayan Roy did not die and was not cremated at Darjeeling in the month of May, 1909, but was merely taken for dead, owing to the fact that he had passed into a state of coma having the outward appearance of death—this state having occurred by reason of poison being wilfully administered to Ramendra Narayan Roy on the evening of the 7th May, 1909, in pursuance of a conspiracy on the part of Satyendranath Banerjee and Ashutosh Das Gupta to encompass the death of Ramendra Narayan Roy. Conspiracy and administration of poison are thus the ultimate foundations of the plaintiff's case, and Mr Chatterjee argued on the appeal on this assumption

It is not altogether clear, however, whether the learned trial judge quite realised the importance of the conspiracy charge, for in one passage of the judgment he goes so far as to say—no party has been charged with con-

spiracy, and the case of the plaintiff as put to the Rani is that she is being charged with nothing

The defendants, as previously indicated, from first to last made the clear-cut case that there never was any kind of conspiracy whatever, but that Ramendra Narayan Roy died from natural causes and was duly cremated on the morning of the 9th May, 1909. It is to be observed that it has never been suggested by anyone that Ramendra Narayan Roy might still be alive and yet the plaintiff is not he, and therefore, I think that despite the fact, as Mr Chaudhuri pointed out, non-cremation theoretically would not carry the plaintiff all the way, for all practical purposes, in the circumstances of the present case, it may quite well be said that just as cremation demolishes the plaintiff's case, non-cremation is equally fatal to the defendants, having regard to the force of the evidence given on the subject of identity

DEFENDANTS' MAIN GROUND OF ATTACK ON JUDGMENT

It is clear from the statement of the arguments on both sides set out above that the defendants-appellants' main attack on the judgment as regards the Darjeeling chapter, part of it, amounted to this—that the learned trial judge, although conscious of the inter-connection between the two parts of the case—which compendiously may be called “cremation” and “identity”—failed to devote sufficient consideration to the evidence and the inherent improbabilities in the plaintiff's version of the Darjeeling chapter, owing to the findings already arrived at by the judge in the matter of identity. In other words, the learned judge did not treat the two parts of the case on an equal footing, nor arrive at independent conclusions on the evidence touching the Darjeeling chapter, but allowed himself to slur over the Darjeeling evidence and to reach his conclusions in the light of his findings on the subject of identity. The main complaint was that there were no independent findings on the subject of cremation or non-cremation and the rescue story

Speaking now for myself, I would here say that I have given to the facts and arguments placed before us by the learned counsel on both sides my very careful, anxious and prolonged consideration. I have read and re-read the judgment of the court below, and have given to it an exhaustive and critical scrutiny for the purpose of endeavouring to determine whether the attack—the vehement attack—made upon it by the learned counsel for the appellants had any justification, and whether there was anything in the judgment or omitted from the judgment which would oblige this court to hold that the learned judge had in any way misdirected himself, or had neglected to canvass, and subject to a full and proper examination, all the evidence given at the trial

FUNCTION OF COURT OF APPEAL

As previously pointed out, the function of the court of appeal is, in my opinion, to determine whether or not the judgment of the trial court can be held to be “clearly” wrong. No doubt for the purpose of arriving at a decision on this point, it is desirable and right that a court of appeal hearing an appeal on questions of fact should examine the evidence for itself in order to form an opinion on the actual merits of the case. But in discharging this duty, the court is, as mentioned above, at a very great disadvantage as compared with the court of first instance, seeing

that the evidence comes before the court of appeal only in the form of printed matter, and not by the mouths of living witnesses where demeanour and manner of deposing can be observed and their veracity estimated accordingly. Thus being so, in my opinion, a court of appeal should be very chary of interfering with the decision of a lower court upon a matter of the mere credibility of this witness or that, and still more chary of a wholesale discarding or disbelieving of large bodies of witnesses, however improbable the story they tell may seem to be.

As I have stated, the main grievance of the defendants-appellants was against the judge's treatment of evidence. In effect, the learned counsel for the defendants-appellants relied upon a misdirection, or rather a series of misdirections, on the part of the learned judge,—misdirections to himself, seeing that he was functioning as both judge and jury, so to say.

At the hearing before us it seemed manifest and obvious to me that Mr Chaudhuri was at no time any too anxious to read to us the volume containing the judgment in the way a book would normally be read, namely, by starting at the beginning and proceeding page by page to the end. No doubt by the end of the hearing the whole of the judgment had at one time or another been placed before us, but in the early stages of his argument at any rate, Mr Chaudhuri was more concerned to extract passages from the judgment, which, perhaps, taken by themselves out of their context and set in isolation, lent some support to the main thesis of the argument for the appellants. This method of procedure is, in my opinion, neither fair to the learned judge nor helpful to the court of appeal.

In order to arrive at a just and right conclusion upon the adequacy and correctness of the judgment of the court below, it was essential, in my opinion, to read and study that judgment not only in its entirety, but so to speak, in the same train of thought in which it was written, and so to follow the line of reasoning which actuated the learned judge in arriving at his various findings. Having used my best endeavours to achieve this, and having carefully and diligently read and pondered over the judgment, I find I am unable to come to the conclusion that there is in the judgment any of the defects which the learned counsel for the appellants sought to bring to light.

CONSIDERED OPINION ON THE JUDGMENT

In my considered opinion, it is only right to hold that the learned trial judge not only expressed himself throughout his judgment in clear, concise and unmistakeable terms, as stated in an earlier part of this judgment, but adequately and fully dealt independently with the two main subjects of the case, and so it cannot be said that the Darjeeling chapter was less properly considered than the subject of "identity".

The learned judge, upon a consideration of the whole of the evidence in the case, found himself in no doubt whatever as to the genuineness of the plaintiff's claim—as we have previously stated. Was he right to take this view? In a case such as this one, where there is such a vast volume of evidence to be reviewed and evaluated, it is no doubt desirable to consider the matter on somewhat broad lines in the light of the probabilities, the conduct of the parties and that of the other protagonists and the more important witnesses in the case, and as far as possible, to follow the indications furnished by such contemporaneous documents as can be taken to be

reliable At the same time, however, due regard must be paid to the evidence given by the various witnesses I would here reiterate that the story put forward as the case for the plaintiff is in every way one of the most extraordinary, and indeed fantastic, that any court of law has been asked to accept and believe Nevertheless, the story in its main outlines and features is on the whole fairly cohesive and consistent It is one which, if true, may not inaptly, I think, be described as regards its successive chapters as macabre, mediaeval and romantic On the other hand, the story, if not true, is one which has been conceived, elaborated and invested with a wealth of imaginative detail and embroidery, and then afterwards supported with all appropriate evidence, concocted and collected with a foresight and skill which far transcend anything to be found in any of the ordinary run of false cases, which—one regrets to say—from time to time are brought before the courts in this country In short, the plaintiff's story, if false, is one of the most gigantic impostures ever foisted upon a credulous and emotional public

IMPORTANCE OF DARJEELING CHAPTER

The case made on behalf of the plaintiff in the court below must, of course, be scrutinised and adjudicated upon in its entirety, and all its component parts must be examined and considered independently, even though they be closely interwoven, but even so, in my view, having regard to the nature of the evidence given on the subject of identity, the really crucial and dominant part of the story is the Darjeeling chapter, and for that reason, and in order to test Mr Chatterjee's assertion that one could bodily transpose that section of the learned trial judge's judgment which deals with Darjeeling without impairing the validity of the findings, it seems convenient and desirable to reverse the order in which the component parts of the story were dealt with by the learned judge, and so to take the Darjeeling chapter first, then the events of the intermediate period, and lastly, the question of identity—(thus adhering to the chronological order of events)—and expressing agreement or otherwise with the judge's findings

If the case for the plaintiff had been founded upon a plain straightforward story of the disappearance of Ramendra Narayan Roy in the year 1909, or at some other time anterior to the advent in Dacca of the plaintiff, or even upon the supposed death of Ramendra Narayan Roy in such circumstances that the certainty of his death might have been in any way susceptible of doubt, as, for example, the reputed wreck or foundering of a ship in which he happened to be travelling, the onus which lay on the plaintiff on coming into court in this case would have been very much lighter than it actually was—having regard to the mass of evidence he was in a position to produce in support of the "issue of identity", as the learned judge terms it Even if the plaintiff could have rested his case solely on the illness and apparent death of Ramendra Narayan Roy at an early hour on the evening of the 8th May, 1909, and an abortive cremation followed by a rescue, and then after a lapse of years, a subsequent re-appearance and declaration of identity, the problem before the court would have been, in my opinion, much easier to resolve than it was The plaintiff's case was, however, complicated, and the burden which lay upon him rendered heavier, by reason of the circumstance that the plaintiff had to admit throughout that a cremation purporting to be that of Ramendra Narayan Roy undoubtedly took place on the morning of the 9th May, 1909 The fact that the plaintiff's story

involves the existence of two separate cremation proceedings, one on the evening of the 8th May, and one on the morning of the 9th May, gives rise to questions, a right interpretation of which may, in my opinion, provide the key to the whole problem of the justness or otherwise of the plaintiff's claim in the suit. Hence the importance of the Darjeeling chapter.

ISSUE NARROWED DOWN TO "DEATH" AT DUSK OR AT MIDNIGHT

Mr Chatterjee, in an intervention at an early stage of Mr Chaudhuri's argument before us, frankly confessed that he was fully conscious of the difficulties he had to surmount by reason of the occurrence of the morning cremation and the plaintiff's explanation of it, seeing that this explanation was wholly based upon an assertion that the corpse carried out from the house "Step Aside", and subsequently burnt at the new cremation ground, was not the body of Ramendra Narayan Roy, and the supposition, which the plaintiff himself was not in a position to substantiate, that the body must have been one which somehow and somewhere had been illicitly procured during the small hours of the night of May, 8th-9th, in order that it might be publicly passed off as being that of Ramendra Narayan Roy, who, according to the plaintiff, had escaped cremation and had been undiscoverable the previous evening. Mr Chatterjee went so far as to concede that the whole problem of whether Ramendra Narayan Roy was in fact cremated at Darjeeling might be narrowed down so as to be dependent for solution upon the one solitary question of whether Ramendra Narayan Roy passed into a state of apparent death at or about 7 P.M. on the evening of the 8th May, as the plaintiff says, or passed into a state of actual death at or a little before midnight on the 8th May, as the defendants on their side assert.

It was conceded indeed by both sides that if Ramendra Narayan Roy "died" in the early evening, he would undoubtedly have been carried out from "Step Aside" and taken for cremation the same evening. The Hindu aversion from a "*bashu mara*" would inevitably have operated to prevent the retention of the dead body in the house for such an extended period as from 7 o'clock in the evening until 9 o'clock the next morning, even though the entourage of the deceased consisted of persons who were strangers in Darjeeling, and the producing of a cremation party more difficult for them than if they were in their own locality or in a large town, and the way to the cremation ground was long and arduous in the dark. On the other hand, having regard to these circumstances, if death occurred round about midnight, it would not be unnatural that the cremation should be held over until a reasonable hour next morning.

It appears, therefore, that the vital, not to say, determining, factor as regards the question of whether Ramendra Narayan Roy was or was not cremated at Darjeeling in the month of May, 1909, is the time of the "nominal" or the "actual" death. The learned trial judge was fully alive to this point, and repeatedly stresses it, and indeed to such a degree that the phrase "death at dusk" became almost a catchword in the case. Certainly the learned trial judge used it as a kind of touchstone for testing the genuineness or otherwise of much of the material evidence concerning the events at Darjeeling, and before us that same expression "death at dusk"—with "draped at dawn" as a sort of antithesis—was constantly upon the lips of counsel. These observations bring me to a consideration of the Darjeeling evidence as given at the trial and the judge's findings thereon.

NATURE OF ILLNESS

It was a patent and undisputed element in the case that the question of "death at dusk" or death at midnight is bound up with, and to a large extent dependent upon, the question of what was the real nature of the illness which ultimately led to the removal of the body of Ramendra Narayan Roy, alive or dead, from "Step Aside".

The second Kumar, as we have already stated, started for Darjeeling on the 8th April, 1909, accompanied by a party, which, as the learned judge points out, was described in the case as a motley crowd. The learned judge has fully enumerated and described them and their occupations. The second Kumar and his party arrived in Darjeeling on the 20th April, 1909, and took up residence at "Step Aside".

It is important to bear in mind that at that time, according to the plaintiff's own account, there was nothing whatever the matter with him except syphilis. Actually, on the side of the plaintiff, there was no evidence concerning any illness except that of the plaintiff himself, but of course, as the learned judge points out, the plaintiff was quite entitled to take advantage of and rely upon evidence given on behalf of the defendants, or to show that what these witnesses said negativing the plaintiff's story was not true. Accordingly, witnesses gave evidence on the plaintiff's side for the purpose of showing that the second Kumar was "dead" shortly after dusk, and witnesses were called to say that they took part in an evening cremation or saw it, and so forth. The principal witnesses for the defendants as regards the illness were the doctor (Calvert), Bibhabati Devi, Satyendranath Banerjee, Ashutosh Das Gupta, Bepin (the khansama), Barendra Banerjee (the clerk), Anthony Morel, Jagat Mohini (the nurse), and Shyamadas Banerjee, who was a cousin of Satyendranath Banerjee.

The learned trial judge, as a preliminary to discussing the question of the illness of the second Kumar, deals fully with certain events in connection with the obtaining of statements in Darjeeling after the declaration of identity on the 4th May, 1921, including the activities of Satyendranath Banerjee, and it is convenient that I should here say that after a full consideration of this matter, I am in agreement with the views of the learned judge. This topic will be fully dealt with by my brother Biswas, and I need say no more than that I have read what he has written and I am in complete agreement with it.

DR CALVERT'S EVIDENCE AND AFFIDAVIT OF DEATH

The defendants for the purpose of showing the nature of the illness of the second Kumar relied largely—and quite reasonably—upon the evidence of Dr Calvert, who, as the learned judge appreciated, testified practically to the whole course of the illness and to the death. It was obvious throughout the case and at the hearing before us that if the evidence of Dr Calvert could be accepted, that alone would be sufficient to dispose of the whole of the plaintiff's case, having regard to the terms of the certificate of death given by Dr Calvert as early as the 7th July, 1909, wherein he stated that he attended Ramendra Narayan Roy in his last illness and that he died at Darjeeling at 11-45 P.M. on the 8th May, 1909, after an illness of three days, and that the cause of his death was collapse following upon an acute attack of biliary colic (gall-stone). This certificate was sworn to before one W. M. Crawford, at that time the District Magistrate at Darjeeling. Crawford

himself signed another certificate of death on the 8th February, 1910. It is clear that he had no personal knowledge whatever touching the matter on which he was pledging his oath, and when he was examined on commission in the case, he was unable to remember how it came about that he gave the certificate or how the details it contained came to his knowledge. It is obvious, therefore, that Crawford's certificate ought never to have been given, and it adds nothing whatever to the testimony of Dr Crawford. The existence of Crawford's affidavit constituted a formidable obstacle for the plaintiff.

CALVERT'S LETTER OF CONDOLENCE SOME CURIOUS FEATURES

The learned judge in discussing this matter begins with the fact that on the 10th May, 1909, Dr Calvert wrote the letter of condolence which is quoted in the defendants' pleading. This letter assumed considerable importance in the case, because the case of the defendants, if not exactly based upon it, at any rate keeps very closely to it. There were certain curious features in connection with this letter which were never satisfactorily explained. To begin with, it was a strange thing that the letter should ever have been written at all, seeing that Dr Calvert did not know the eldest Kumar to whom it was addressed, and in the ordinary course it would not be likely that a doctor who had only known a casual patient a short time would take the trouble to write in his own hand a comparatively lengthy epistle to an unknown, or for that matter, a known, relative of the patient who happened to die. No one on the side of the defendants could give any explanation of how the letter came to be written. Dr Calvert when examined on commission could do no more than to admit that he wrote the letter—it would have been difficult for him to have done otherwise, seeing that it is a holograph document—and to admit that the letter was written at the instance of some one from "Step Aside". It is a remarkable circumstance that the language of the letter is scarcely of the kind that one would expect from the pen of an English professional man. The learned judge took the view that one or more of the witnesses who gave evidence in the case, those who were inmates of "Step Aside", must have known about this letter, though none of them would admit to any such knowledge.

"FOURTEEN DAYS' ILLNESS" IN CALVERT'S AFFIDAVIT OF DEATH

The learned judge points out that at the trial it was common ground that the second Kumar fell ill some time in the early hours of the 6th May, 1909. That period of time would be regarded by Bengalees as being past the night of the 5th May, owing to the reckoning of each day as from sunrise to sunrise. The learned judge makes a point of the fact that prior to the opening of the trial, when witnesses were examined on commission, it was apparently thought on the side of the defendants that the illness ought to be made a matter of fourteen days, in order to give support to that part of Dr Calvert's affidavit where he declares, "I have known Ramendra Narayan Roy for 14 days". This statement was taken by the plaintiff's side as suggesting that Dr Calvert had been treating the second Kumar for a period of fourteen days immediately preceding the death. If the affidavit stood by itself, there would, I think, be considerable difficulty in attributing any such meaning to it, particularly having regard to the sentence, "after

an illness of three days" But unfortunately for the defendants, Dr Calvert in his deposition taken on commission himself gave strength to the plaintiff's view of the meaning of the certificate, for, when Dr Calvert was asked whether he was told that he, assisted by Dr Niparan Sen and the family physician (Ashutosh Das Gupta), had treated the Kumar for fourteen days, he replied that he knew the fact without any statement, and Dr Calvert went on to say that when he first saw the second Kumar, he was in pain—pain on the right side of the abdomen—from biliary colic, and he added, "that is what he had when I saw him first in consultation after his arrival in Darjeeling I watched the condition from day to day so far as I remember he had some minor attacks off and on, finally culminating in the fatal seizure which we were not anticipating" It is clear that if this evidence were true, the "last illness" must have been "a fourteen days' affair", as the judge calls it The suggestion that the illness was of that duration received support from the evidence given by Anthony Morel, who stated that the illness was going on for some ten or twelve days, and that Dr Calvert was attending from time to time almost from the date of the arrival of the second Kumar in Darjeeling and actually gave prescriptions on each occasion up to the day of death All this was no part of the defendants' real case as regards the illness, and as the learned judge points out, at the time of the trial it was agreed that the evidence was not true The evidence of Bibhabati Devi, Satyendranath Banerjee, Birendra Banerjee and the family physician Ashutosh Das Gupta all goes to show that Ramendra Narayan Roy was in good health—except for the syphilis of course—and he was going about in Darjeeling enjoying himself until he fell ill on the 6th May

UNTRUE EVIDENCE OF DR ASHUTOSH DAS GUPTA

In order to make the situation square with what was stated in Dr Calvert's affidavit, however, Ashutosh Das Gupta gave evidence to the effect that Dr Calvert was called in to see Ramendra Narayan Roy two or three days after the latter's arrival in Darjeeling, that is to say, somewhere about the 23rd or 24th April, and then the next visit of the doctor was on the 6th May—that would give the period of fourteen days mentioned in the affidavit Ashutosh Das Gupta stated that on the occasion of the first visit he told Dr Calvert the medical history of Ramendra Narayan Roy—that he had syphilis and that he was subject to biliary colic There were no symptoms of biliary colic manifest at the time According to Ashutosh Das Gupta Dr Calvert prescribed for syphilis only The learned judge came to the conclusion that this "biliary colic is a tale, and the fever, malaria fever, which the defendants were putting in was no less so", and the learned judge took the view that Dr Calvert's suggestion as to fourteen days' illness with pain off and on, which according to him he had watched from day to day, was excluded by the one single fact that there was no prescription at all before the 6th May It must be remembered that it was the plaintiff's side who proved the prescriptions which were put in at the trial, and although Ashutosh Das Gupta admitted that he kept copies of all the prescriptions which were given by the outside doctors, these copies were never produced, and so far as we can see, no attempt was ever made to obtain a copy from the dispensing chemists of any prescription alleged to have been given by Dr Calvert prior to the 6th May The learned judge held, and I think rightly, upon the evidence, it was not the fact that Dr Calvert saw Ramendra Narayan Roy before the 6th May, or that he diagnosed biliary colic on that

date The learned judge accordingly came to the conclusion that Dr Calvert's affidavit in so far as it suggested a fourteen days' illness, and Dr Calvert's own personal evidence that this illness was a fact, were both demonstrably untrue. The learned judge pointed out, and no doubt with ample justification, that had Dr Calvert really seen syphilis or prescribed for it, he would assuredly have mentioned it in his affidavit, for a direction in the margin of the printed form on which the affidavit was made required the deponent to state not merely what was the disease, from which the deceased died, but also whether he had at the time any other disease, either chronic or acute.

OTHER INACCURACIES IN CALVERT'S AFFIDAVIT

The learned judge also draws an inference as to the accuracy or otherwise of Dr Calvert's deposition in the affidavit from the fact that Dr Calvert set down the age of the deceased as being "about 27 years", whereas the real age of Ramendra Narayan Roy was less than 25 years. This matter as to age occurs in other affidavits procured for the purpose of the Insurance claim, and so the learned judge ascribes the mistake to a common cause, namely, the activities of Satyendra Nath Banerjee, who, as entries in his much discussed diary show, was himself ignorant of Ramendra Narayan Roy's exact age and had to make enquiries upon the matter. The ultimate conclusion arrived at by the learned judge was to the effect that Dr Calvert must have recklessly put into the affidavit whatever was required without giving any thought to accuracy of detail, "so long as he had no doubt that death was a fact". The learned judge then said that he did not propose to dispose of the residue of Dr Calvert's affidavit that death had taken place at 11-45 on that short ground, particularly as Dr Calvert swore that he was actually present at death at midnight. That would be displaced by other facts material to the question of the actual time of death.

DEFENCE THEORY OF BILIARY COLIC AS CAUSE OF DEATH EXAMINED

The learned judge, after discussing the nature of biliary colic and the medical evidence on the subject, proceeded to analyse with great care and in much detail the evidence relating to the symptoms and cause of the illness which began on the 6th May, and he demonstrated, in my opinion, in a way which is altogether satisfactory and convincing, that the series of telegrams which were produced at the trial are entirely at variance with and indeed negative the case sought to be made by the defendants, and the learned judge came to the conclusion that "there is no end of things that exclude biliary colic" as the cause of death. He enumerates some of them as follows —

- 1 Not one of the telegrams mention biliary colic
- 2 Biliary colic does not cause diarrhoea, nor blood in stools
- 3 The treatment was not that appropriate to biliary colic at all, except on the theory that Ramendra Narayan Roy had refused an injection when in the agony of biliary colic, and even on that theory,

there was no substitute for injection except the opium pills, and if these go to that, none go to the bleeding which was terrible.

The learned judge stressed the evidence given by the medical witnesses for the defendants, Dr Denham White having stated that on reading Dr Calvert's evidence he thought the treatment was directed towards enteritis. Dr Denham White had further stated that the symptoms were of acute enteritis, and Dr Thomas in his turn had said that "enteritis is inflammation of the mucus membrane of the intestine. It is caused by an irritant. The irritant may be organic or inorganic. Arsenic is a chemical irritant."

4 The family did not hear of biliary colic as the cause of death.

The learned judge points out that "biliary colic" appeared for the first time in the condolence letter written by Dr Calvert on the 10th May, and even there it is only "colic." The learned judge was of opinion that it was perfectly clear that somebody obtained this document from the doctor for the purpose of hiding the real cause of the blood stools and the collapse of Ramendra Narayan Roy and "the apparent death", and that Dr Calvert, who, as he himself admitted, had never seen a case of arsenical poisoning, had either thought of or accepted a suggestion of biliary colic as an explanation of what had occurred—a death which according to his own account was sudden, unexpected and unnecessary. The learned judge held that Dr. Calvert had put into the letter just whatever was wanted without any serious independent thought in the matter, even as he subsequently put into the affidavit of the 7th July, 1909, a fourteen days' illness and an inaccurate age for the deceased.

The result of the learned judge's examination and consideration of all the evidence concerning the nature of Ramendra Narayan Roy's illness, was that the learned judge arrived at a definite finding that biliary colic as the cause of the illness was a fiction, as that could not be an explanation for fresh red blood in the stools. The treatment was not for biliary colic at all, as Dr MacGilchrist for the plaintiff and Dr Denham White for the defendants both agreed, and as Dr MacGilchrist and as Dr Thomas virtually agreed.

SYMPTOMS OF ARSENICAL POISONING

Having thus eliminated biliary colic as the cause of the symptoms which manifested themselves on the 8th May, the learned judge proceeded to give his views on what was the real cause of those symptoms, and he came to the conclusion that these were not due to any disease, but to an irritant introduced into Ramendra Narayan Roy's system. The evidence discloses no irritant other than the ingredients of the arsenic prescription given by Ashutosh Das Gupta on the 7th May, which he so assiduously endeavoured to repudiate. The learned judge did not find it possible to go so far as to hold that this "medicine" was wilfully administered with the object of causing death, as he took the line that there was a bare possibility that Ashutosh Das Gupta gave the potion like a quack, and then became frightened at the result of his administration.

NO SUPPORT FOR PLAINTIFF'S CASE OF CONSPIRACY TO POISON

The learned judge thus negatives the plaintiff's case that he was deliberately poisoned in pursuance of a conspiracy between Satyendranath

Banerjee and Ashutosh Das Gupta intentional poisoning had been an integral part of the plaintiff's story, and even Mr Chatterjee felt it incumbent upon him to say that the judgment of the learned judge was wrong on this point, and that upon the evidence the learned judge ought to have held that there was a conspiracy. I have given the utmost consideration to the reasoning and arguments of the learned trial judge, and it seems to me that upon the evidence which was before the court, the learned judge's conclusions are such that it is not possible for this court to hold that he was not right. As regards the question of conspiracy, it is very difficult to see how there was any evidence upon which an affirmative finding could be based, and the probabilities of the matter and the circumstances are all against any such thing.

To begin with, as far as we can see, there was no real motive for Satyendranath Banerjee and Ashutosh Das Gupta desiring and encompassing the death of Ramendra Narayan Roy at that time. Satyendranath Banerjee could scarcely have imagined that if Ramendra Narayan Roy were removed, that would open the way for him to get control of his sister's—the widow's—share in the Bhowal estate, seeing that Ramendra Narayan Roy's two brothers were then alive, and quite capable—as immediate subsequent events showed—of making resistance to any interference with the estate on the part of Satyendranath Banerjee. The latter could not have foreseen that within a comparatively short time he would be able to lure his sister away from the influence of her brothers-in-law and to get control of her very substantial Hindu widow's estate—as he ultimately succeeded in achieving. Satyendranath Banerjee at the time of the Darjeeling excursion was to all intents and purposes a mere hanger-on at Jaidebpur, a parasite on the estate whose interests lay wholly in keeping in the good graces of Ramendra Narayan Roy and his two brothers.

So far as Ashutosh Das Gupta is concerned, there was even less motive than in the case of Satyendranath Banerjee. Ashutosh Das Gupta was an employee—not much more than a paid servant of the family—whose personal interests and loyalty were wholly bound up with his position. It seems extremely unlikely that he would have been minded to jeopardise his future, and perhaps his liberty and even life, merely or mainly for the pecuniary advancement of Satyendranath Banerjee, who was not—and as far as could be foretold, not likely to be—in a position to make an adequate return for treachery and murder.

Moreover, the idea of a conspiracy would involve the supposition either that the two conspirators had previously hatched a plot which was to be put into operation, if and when Ramendra Narayan Roy happened to fall ill—at one time there was indeed a faint suggestion that Satyendranath Banerjee had inveigled Ramendra Narayan Roy into going to Darjeeling for the express purpose of getting rid of him by felonious means,—or else the position that all on a sudden impulse the conspirators had put their heads together and taken advantage of the opportunity for murder afforded by the unforeseen indisposition of their friend and patron. Neither of these alternatives seems at all probable or credible, and certainly there is no evidence which would justify a finding that either of them in fact obtained. In my opinion, the learned judge took the only course open to him.

RIGHT CONCLUSION OF TRIAL JUDGE AS TO CAUSE OF ILLNESS

The evidence on record relating to the facts and circumstances of the symptoms and cause of the illness, viewed in the light of the medical evidence

given in the case, was sufficient to warrant the conclusions arrived at by the learned judge both as regards the cause and its origin. I, accordingly, do not feel able to disagree with this part of the judgment.

TIME OF "DEATH"

I now turn to what I have described as a crucial factor in the whole case, namely, the time of death. The learned judge himself characterised this question as being "for the requirements of this case the vital issue", remarking that "if he (Ramendra Narayan Roy) had died at midnight, the whole story of his being out at about 9 P.M. for cremation becomes a tale". The learned judge prefaces his discussion of the point whether Ramendra Narayan Roy died at midnight or at a little after dusk, by recalling that there is the affidavit of Dr. Calvert that he died at 11-45 P.M., and the doctor's evidence that he himself was present at the death. It must be borne in mind that there is also on the record the positive evidence of Bibhabati Devi that from 2 P.M. on the 8th May, when, as she says, Dr. Calvert came and the blood stools were going on, she sat by the side of Ramendra Narayan Roy and never left him until he died at midnight, and even then she did not go away but lay on her dead husband's bed until his body was removed the next morning. Bibhabati Devi also stated that Dr. Calvert was in the house continuously from 2 o'clock in the afternoon until a little after death had occurred, except for a short period when he went away for dinner at about 8 o'clock. The learned judge found it difficult to believe that a doctor of Dr. Calvert's standing would have remained in the house for so long doing nothing, particularly having regard to the fact that there is no prescription later than the early evening. The suggestion was that the doctor installed himself in the "sitting room"—the room next to that in which Ramendra Narayan Roy lay on the floor in a moribund condition. Bibhabati Devi says and other witnesses say that she never thought that Ramendra Narayan Roy was dying.

DR. CALVERT'S STATEMENTS

It is important to recall some of the relevant passages in Dr. Calvert's evidence. In his examination-in-chief he stated

"As far as I remember I was present at the time of death", and upon his affidavit of the 7th July, 1909, being put to him, he said

"I saw the man dead and after some time I left"

He asserted that he was "perfectly satisfied" that life was extinct.

In cross-examination Dr. Calvert said

"I remembered without seeing the certificate that he died at midnight"

It must be borne in mind that Dr. Calvert was testifying some twenty-two years after the event. He had kept no note or memorandum and was speaking entirely from memory, but he nevertheless said that he had a very good recollection, "because the death of the Kumar made a great impression on him", in that "I thought it was an unnecessary death, and that had he agreed to the treatment (by injections), his death would not have occurred, he being a young man". This was said in reply to the question whether

he had an independent recollection apart from his affidavit of the 7th July, 1909

CALVERT'S LETTER TO LINDSAY

It was admitted by Dr Calvert that before he gave his evidence certain documents had been shewn to him, namely, his prescriptions, his affidavit, a "statement of the case" (the precise nature of which was never satisfactorily explained), and also a letter written by him to J H Lindsay in the year 1921. This letter is dated the 3rd August, 1921, and was written at the time when an enquiry into the death of Ramendra Narayan Roy was in progress and letters were being sent out to various people with a questionnaire to be answered. We do not know what were the terms of the letter to which Dr Calvert's letter of the 3rd August, 1921, was an answer, or what, if any, information was given to him before he wrote to Lindsay. This letter of the 3rd August, 1921, was the subject of much discussion at the hearing before us. The letter stated that "he (Ramendra Narayan Roy) was suffering from 'gall stones'." Mr Chatterjee for the plaintiff respondent in the appeal drew our attention to the fact that the letter states, "his death made a considerable impression upon me at the time, as I thought that had he only listened to our advice, he need not have died",—a state of mind on the part of Dr Calvert which was referred to again in similar terms at the time when Dr Calvert was giving evidence. I think Mr Chatterjee rather wanted us to infer from this that Dr Calvert's memory must have been refreshed by the documents he had seen before he came to London, and that Dr Calvert's recollection was not altogether quite so independent as he wished it to be thought. The really important thing from the plaintiff's point of view in connection with the letter of the 3rd August, 1921, is that it contains the statement "I cannot now be certain whether I was present at the moment of his death, but I saw him shortly before it in a state of profound collapse." The letter goes on to say "On my last visit his Bengalee medical practitioner was present, and arrangements were made for the late Col MacCrae, the I G C H, Bengal, to see him in consultation in the morning. Col MacCrae had been Civil Surgeon at Dacca and knew the family."

Then follows the significant statement

"The Kumar did not recover from the collapse and died the same night"

It seems a little difficult to my mind to reconcile the expression "on my last visit" with Bibhabati Devi's assertion that Dr Calvert was in the house for several hours at a time—first, a period of some six hours, and then, another of two or three hours after dinner. If, as Bibhabati Devi states, the doctor had been in the house for such a protracted period, the expression "on my last visit" strikes me as being singularly inappropriate.

The learned judge, as I have stated, had come to a finding that the fourteen days' illness implied in the affidavit of the 7th July, and the evidence of Dr Calvert, referring to "pain on and off" and "watching the case from day to day", was all untrue, and so he propounded for his own guidance the proposition "It will have to be seen whether the 'death at 11-45 P M' has the same origin and the same truth as the 14 days' illness." In other words, the learned judge, having arrived at the idea that one part of Dr Calvert's affidavit was not accurate, had set for himself the question of whether another and even more important part might not be equally inaccurate.

FACTS IN SUPPORT OF DEATH AT DUSK

The learned judge was of opinion that the answer to this vital question was indicated by the conjuncture of certain facts which he enumerated as follows

- 1 The course of the illness showed that in the early evening death was approaching—the indications being that already there was no pulse, and collapse, and there was the rubbing of the body with the ginger-power. All these things are to be deduced from the defendants' evidence. The learned judge draws a strong inference from the fact that according to Bibhabati Devi's own account of the matter, as regards any treatment, there is a blank between the arrival of Dr Sarkar and the occurrence of death.
- 2 The last telegram from "Step Aside" to Jadepur was despatched at 3-10 P M standard time—that is to say, at about 3-40 P M Darjeeling time.

There is on record the telegram sent by the eldest Kumar at 4-45 P M in which he had requested an immediate reply as to the present condition of his brother.

It may be assumed that this telegram reached Darjeeling round about 6 P M, yet no answer to it was sent.

- 3 The visit of Dr B B Sarkar at dusk. That Dr B B Sarkar did make a visit is evidenced from the entry in his own diary, where it is recorded, "Kumar of Bhowal some hours"

The learned judge, having considered the evidence given for the defendants by Satyendranath Banerjee and Ashutosh Das Gupta as well as that of Bibhabati Devi herself, came to the conclusion that it could not have been possible that Dr Calvert was still at "Step Aside", when Dr B B Sarkar was called in by Satyendranath Banerjee at the suggestion of the brothers' uncle, Suryanaram, and so the learned judge thought that the real situation must have been that already the end was near, and both Dr Calvert and Dr Nibaran Sen had gone away, after suggesting a consultation, for the comfort of the relatives, with the Inspector General of Civil Hospitals in the morning, though in their own minds there was the belief that nothing more could be done for their patient.

It was argued on behalf of the appellants before us that the form of the entry in Dr B B Sarkar's diary would seem to indicate that this doctor could not have been at "Step Aside" when Ramendra Narayan Roy "died", or he would have recorded that fact, seeing that the doctor was only in a small way of practice, and to attend on a man of Ramendra Narayan Roy's position in life must have been regarded by him as something not only unusual, but an honour. On the other hand, the entry accords I think more with the judge's view of the evening's events than with the account given by Bibhabati Devi.

It would seem in the highest degree unlikely that a comparatively obscure practitioner such as Dr B B Sarkar would have remained in the house for "some hours", if Dr Calvert and Dr Nibaran Sen were also in continuous attendance throughout the evening. The learned judge has taken the view that the entry in Satyendranath Banerjee's diary under date the 8th May

was not only untrue as regards the statement of the time of death, but also as regards the doctors who were in attendance when death occurred

The absence of the most important of all the telegrams sent from Darjeeling, namely, that which was sent to Jaidebpur announcing the death of Ramendra Narayan Roy

There was considerable discussion at the trial, and before us in the appeal on this matter, and as mentioned in an earlier part of this judgment, it is a matter for profound regret that this important document was not forthcoming. Its importance cannot be over-estimated, as its contents would have been sufficient of themselves definitely to settle the highly controversial question of the time of death, and might indeed of themselves have been sufficient to dispose of the whole of the case.

In my opinion, the learned judge was quite right in thinking that it is amazing that no one on the defendants' side, not even one of the witnesses who were at Darjeeling, including Satyendra-nath Banerjee, knew anything whatever about this telegram, when or by whom it was sent. With the exception of Birendra Banerjee, they say nothing about it, and he, only when confronted with a statement he had made in the Sripur case, made the somewhat extravagant statement that Dr Calvert had sent the telegram, —a most unlikely thing, seeing that Dr Calvert did not know the family at all.

ALL ABOUT THE "TELEGRAM OF DEATH"

The question of this telegram is of such importance that it is perhaps desirable to consider the matter in some detail. After the appearance of the plaintiff in Dacca in the year 1921 and his declarations that he was Ramendra Narayan Roy, J. H. Lindsay wrote to Sarajubala Devi, the widow of the eldest Kumar, requesting her to send him all the telegrams relating to the illness and death and cremation of Ramendra Narayan Roy. That letter is dated the 27th October, 1921, and a reply came on the 9th November that year, enclosing documents of the kind asked for. And it is an outcome of this that the telegrams put in evidence in the case were produced, but not the telegram of death, as it has been called.

At one stage of the case the suggestion was put forward that this important document had been deliberately withheld by Sarajubala Devi, but subsequently this suggestion was expressly abandoned, as appears from an entry in the order sheet of the case made on the 4th July, 1935. In any case, the suggestion could have no substance in it, for, if there had been any motive on the part of Sarajubala Devi to keep back this particular telegram, there would have been an equal motive for her to have suppressed all the telegrams, seeing that according to the defendants she was inimical to the plaintiff, and regarded him as an impostor, right down to the year 1928 or even somewhat later.

The telegrams Sarajubala Devi sent to J. H. Lindsay towards the end of 1921 had originally come into her possession four or five years before, she in the year 1916 having requested the Manager of the estate to let her have her late husband's private papers. The correspondence with regard to this appears as *Exhibits 370, 372 and 65*.

The document *Exhibit 370* is a letter dated the 5th December, 1916, written by Sarajubala Devi to Needham (at that time the Manager), and in the letter Sarajubala Devi expressed a wish to have her husband's papers, because they were required for the purpose of the "allocation" proceedings which were going on at the time. These proceedings had been started at the instance of the Board of Revenue with the object of adjusting accounts as between the relics of the three Kumars, after debiting against each the personal expenses of the husbands respectively.

On receipt of this letter, the Manager instructed Jogendra Nath Banerjee, the private secretary, in whose office the documents required were kept, to put up a list, and on the 10th December, 1916, Jogendra Nath Banerjee wrote to Sarajubala Devi, undertaking to send to her as soon as possible "all the letters and other things". The documents were ultimately sent to Sarajubala Devi by Needham on the 18th April, 1917 together with a list. Needham stated in the covering letter that he was retaining a copy of this list in his own office. It is the plaintiff's case that the "telegram of death" was not included among the other papers sent to Sarajubala Devi by Needham. As I have said, the defendants at one time made the suggestion that the telegram of death must have been sent with the others, and subsequently withheld by Sarajubala Devi. But if this had been so, one would have expected it to have been included in the list retained by Needham. There is, however, no mention of this telegram in the list Sarajubala Devi's copy of the list was produced by her when she was giving evidence on commission, and was produced by the plaintiff respondent for our inspection at the hearing of the appeal. It is perhaps not right that one should draw any inference adverse to the defendants from the absence of any reference in the list to this particular telegram, seeing that the list does not appear to be either complete or even accurate. On the other hand, it seems not unreasonable to assume, as the learned judge does assume, that J. H. Landsay would not have been content with receiving a bundle of telegrams from which the most important of all was missing, except upon the basis of the missing telegram being already in his possession. In the judge's view, therefore, it comes to this—that the vitally important "telegram of death" was not sent to Sarajubala Devi along with the other papers which were sent to her by Needham in the year 1917, but must have been retained in the office and would have been available to Landsay in the year 1921.

A valuable piece of evidence which goes to show that this was the situation was given by S. P. Ghosh, who was Deputy Collector of the Court of Wards during the years 1923 to 1925. He was a witness on the side of the defendants. He stated in cross-examination that he had seen the confidential papers connected with the sadhu (i.e., the plaintiff), and amongst them, the telegram of death, and he was not re-examined on the point.

It was common ground between the parties at the trial that the telegram of death was delivered to Rabindra Narayan Roy, the youngest Kumar, at about 9 A.M. on the morning of the 9th May, 1909, as he was on his way to the railway station at Jaidebpur to make a start for Darjeeling, and evidence as to the contents of the telegram was given by some of the persons who were with him, e.g., by Jitendra Nath Mukherjee (Biloo), a son of Indumoyee Devi, the eldest sister of Ramendra Narayan Roy, and by Sagar, a son-in-law of Jyotirmoyee Devi, who says that the telegram said—"expired this evening", but he did not notice the time of despatch. The defendants' witness Phanindra Banerjee also says, he was present at the time and saw the telegram, and that it read "Heart tends to write Kumar expired

last midnight" This seems to have been a pure flight of fancy on the part of Phani, but in any case he is such a discredited witness, if only for his "diary" or "Lesson-book", as the learned judge calls it, that his evidence is wholly unreliable.

In addition to this evidence, there is the entry in Satyendranath Banerjee's diary under date May 8th, "Kumar Ramendra expired midnight" The same entry contains the statement, "Message to Uttarpara and to Jaidebpur" yet, as the learned judge notes, Satyendranath Banerjee had nothing to say as to the telegram of death.

An explanation of why the telegram was delivered on the morning of the 9th and not earlier was given by Niranjan Roy, who was a signaller at the Jaidebpur Railway Station at that time, and the telegrams which were sent from Darjeeling on the 8th May at 11-45 A.M. and at 3-10 P.M. are in his handwriting. Niranjan Roy stated that although not on duty, he was at the Jaidebpur Station at about 9 or 9-30 P.M. on the 8th May, and that although he has no clear recollection of a telegram arriving, he remembers that there was a general commotion amongst the staff at the station, because they had received the news that the second Kumar was dead. The witness evidently impressed the learned judge as being a careful and truthful witness who would not go beyond his recollection. The witness made the suggestion that if the fact was that a message had come through from Darjeeling at that hour of the evening, it might not have been sent out to Rajbari that same evening, so as not to disturb and distress the family at an hour when nothing could be done, there being no trains for Darjeeling until the next morning.

The learned judge came to the conclusion after a consideration of all the available evidence that a telegram was sent at night—though possibly not until after midnight, and that its contents were as stated by Jitendra Mukherjee (Sagar) to the effect that the Kumar had expired in the evening.

A small point mentioned by the judge as bearing on the question of the time of death is the admission made by one of the witnesses for the defendants that there was no cooking at "Step Aside" on the evening of the 8th May. The evidence on this point is not very convincing one way or the other, and is really of small importance.

EVIDENCE OF "MAITRA GROUP"

What, however, is of importance and to my mind of such importance that the learned judge was fully justified in treating it as being almost of a decisive character, is the evidence given by the four witnesses, who, during the argument before us, were comprehensively referred to as the "Maitra group". Of these witnesses S. N. Maitra, a gentleman of considerable academic qualifications and distinction, is the chief. The evidence of these gentlemen is to the effect that one day, when they were on holiday staying at the Sanitarium in Darjeeling, they were sitting chatting in the Common Room there before dinner, it would be at about 8 P.M., when a man came with the news that the Kumar of Bhowal had just died, and this man made a request for men to go and help in the matter of carrying the deceased to cremation. S. N. Maitra had a distinct recollection of the episode "the news broke in on the conversation", and the thing remained in his memory—as the judge says. There was absolutely nothing touching the credit of S. N. Maitra and his friends—nothing even suggested in any way whatever,

and the learned judge regarded these witnesses of unimpeachable credit. They were, it is true, cross-examined with a view to showing that they could not have retained in their memory what they say they did, and a suggestion was thrown out that one of them, Radha Kumud Mukherjee, had been unwittingly influenced by the fact that S N Maitra's evidence had been reported in the press before Radha Kumud Mukherjee came to the witness box.

I was not at all impressed by the attempt made by the learned counsel for the defendants-appellants to explain away the evidence of the "Maitra group" by the suggestion that as the 8th May was a Saturday and entertainments might have taken place at the Sanitarium in the evening, the dinner might in consequence have been somewhere in the neighbourhood of midnight.

The learned judge seems to have taken into account all that was urged on behalf of the defendants against the reliability of the evidence given by S N Maitra and his companions, and his conclusion was that these gentlemen did receive in the Common Room the news of death from a messenger before 8 P.M. on the 8th May, 1909.

JUDGE'S FINDINGS NOT SHOWN TO BE "CLEARLY WRONG"

I am bound to say that on a review of this part of the evidence and the learned judge's findings, I am unable to see any reason for saying that such findings are clearly wrong. The witnesses were no doubt fully conscious of their responsibility in the witness box and the importance of the evidence they were giving. I should not feel justified in holding that the learned judge ought not to have relied on their evidence. The learned judge has also discussed the evidence of certain other witnesses, who also say that they heard before 8 P.M. on the 8th May the news of the death of the Kumar, and the learned judge sees no reason for disbelieving them. These witnesses are perhaps not altogether so trustworthy as the Maitra group, but I do not find sufficient grounds for disagreeing with the learned judge in his general conclusions with regard to this evidence.

One of the chief criticisms directed against the judgment on this part of the case was that the learned judge had not given adequate consideration to the evidence of Bibhabati Devi, in regard to whom there had never been any suggestion of participation in any fell design against her husband. The learned judge, as I read the judgment, seems to have taken the view that the evidence given by Bibhabati Devi as regards the illness and time of death could not possibly be true, because the facts and circumstances were all against it, and so he came to the conclusion that a case constructed with some skill had been put into her mouth. I think there is no reason to suppose that the learned judge did not give his careful consideration to all the evidence adduced by the defendants, and then felt himself forced to reject it by reason of his conclusions arrived at on other points.

There is an absolutely definite finding on the part of the learned judge as to the time of death—the learned judge says "The Kumar, I find, apparently died" between 7 and 8 P.M., by which, of course, the learned judge meant that the Kumar passed into a state of apparent death at that early hour in the evening. The learned judge summarises his reasons for this finding at pp. 362 and 363 of the judgment, and I see no ground for saying that the finding was not justifiable.

HOOR OF DEATH THE CRUCIAL TEST

As stated in an earlier part of this judgment, there is a prejudice amongst Hindus against "*bashi mara*", and the learned judge relies upon this as furnishing good cause for supposing that if it were the fact that the Kumar "died" between 7 and 8 P M in the evening, it would be inconceivable that the body would not be carried out for cremation the same evening, and so, as the learned judge held, there would be no reason to reject the evidence that the body was carried to the burning ground at about 9 P M. I think that this argument is quite a sound one. In any case, it was never seriously suggested, as far as I know, that if "death" occurred at 7 P M, yet there was no procession that evening—on the contrary, the existence of an evening cremation proceeding was conditional upon death having occurred "at dusk." It was not argued at the trial that if "death" occurred in the early evening, the body would lie in the house all night. The learned judge made the hour of death the "real test" of the evidence touching the matter of the evening cremation, and in consequence, he did not discuss the evidence of the individual witnesses—those who joined the funeral procession or saw it pass—in any great detail. They (the witnesses to the evening cremation) would not be believed, if death at dusk was not a fact, and if that was a fact, there would be no reason to disbelieve them. Thus the matter is dependent on the question of time of death.

PADMINI MOHAN NEOGY'S EVIDENCE

There was one witness whose evidence the learned judge refers to in some little detail, and upon whom the learned judge relies. The witness is Padmini Mohan Neogy, who at that time was the Sub-Editor of the paper called "*The Bengalee*." He was on holiday in Darjeeling and was staying at the Lewis Jubilee Sanitarium. His evidence was to the effect that one day at dusk a man came and said that the Kumar of Bhowal had died and that men were wanted to help at the cremation. He said, "I was one of 7 or 8 men who, therefore, went to 'Step Aside'." The 7 or 8 people who went with me I knew by face." He proceeded to say that it took half an hour to reach "Step Aside." On arrival there he found the dead body covered up on a *charpoy*, but whether in a room or outside he did not remember. "Directly we reached there, the body was taken to Kaghora. After taking the corpse there, we of the Sanitarium came away, as the weather looked bad."

He said that he got back to the Sanitarium in fifteen or twenty minutes or half an hour, say, at 9-30 or 10 P M, and the rain came a little later. On behalf of the defendants-appellants it was argued that this witness was wholly unreliable, and criticism was directed against his evidence from several angles.

To begin with, although he stated that some seven or eight men went from the Sanitarium to "Step Aside", not one of these came to give evidence at the trial, nor have they been identified by name. Another point taken, and it certainly is of some importance, was that if the evidence of this witness is accurate, there would be presumably have been plenty of time for a pyre to have been raised and the actual burning of the body commenced before any rain fell, seeing that, according to Padmini Mohan Neogy's evidence, something like half an hour had elapsed from the time he left the party.

with the corpse at the cremation ground and (? to) the time rain began to fall, after he had got back to the Sanitarium. Personally, I do not think that inaccuracy of detail as regards a matter of that kind necessarily destroys the main theme of the evidence, which is attendance at an evening cremation procession. The question of whether one attended a cremation after dark or in the morning or not at all, is scarcely one in regard to which there is any room for mistake or faulty recollection, having regard to the standing of the deceased and the general circumstances. We were asked to say that the evidence is not such as should be accepted by the court, but one must bear in mind that if the evidence were deliberately invented, it would have been just as easy to make the witness's testimony as to the rain to be of such a character as to fit in with that of other witnesses. Another piece of criticism directed against this witness was this. The witness is by caste a *Kayastha*, and he evidently realised that only Brahmins were required for carrying the dead body of the Kumar. He gives an explanation for his going that "I understood that *bhadralogs* would do, as enough Brahmins might not be available, and also because I expected a grand feast, the deceased being a big man." This is certainly not a very convincing reason for his attendance, especially as he does not seem ever to have followed the matter up with a view to finding out whether any feast was actually held.

It is to be remembered that a statement was given by this witness to R. C. Datta in June, 1921, and he also gave evidence in the Defamation case. The learned judge took these circumstances into consideration, and also the fact that the witness admitted that persons interested in the plaintiff had seen him and taken down what he said. The learned judge was of the opinion that if Padmini Mohan Neogy had been a "false witness", he never would have made an admission of that nature. Be that as it may, the really important thing is that the learned judge formed a definite opinion as to the veracity of this witness from his demeanour in the box. "his manner", says the judge, "impressed me as that of a truthful man." In view of that expression of opinion, it seems to me very difficult for this court lightly to sweep aside the evidence of Padmini Mohan Neogy, who, at the time he was giving evidence, had been an Honorary Magistrate for some twenty years, and was a member of a District Board and other public bodies. One would expect him to have a due sense of responsibility in the matter of giving evidence.

OTHER WITNESSES OF EVENING CREMATION

There were a number of other witnesses who say that they joined the evening cremation procession, and actually went to the burning ground. They are.

Sitanta Kumar Bagchi,
Kiran Mustaphi,
Bisweswar Mukherjee,
Jatindra Chakravarty,
Manmatha Nath Chaudhuri,
Chandra Singh

The account given by these witnesses is to the effect that they all heard of the death after dusk. They went to carry the dead body as help was wanted, and all of them started with the procession from "Step Aside"

itself, with the exception of Kiran Mustaphi and Manmatha Nath Chaudhuri. These two joined in the procession at the *chowrasta*. The witnesses say they reached the *sasan* at about 10 P.M., having left "Step Aside" at 9 P.M. Kiran Mustaphi and Manmatha Nath Chaudhuri came away directly the corpse had been set down at the *sasan*, so they were not in a position to speak of any of the subsequent events there. The rest of this group of witnesses, however, narrate that a few minutes after the *khat*, on which the corpse was lying, had been set down on the ground, a heavy downpour of rain came on, and as there was no shelter at the spot, they all ran up the hill path, and took shelter in huts or a slaughter-house there. They were away for about an hour, and when they came back and were setting about choosing a place for the pyre, it was noticed that the dead body was not on the *khat*. A hue and cry was raised, and a search conducted with the aid of lanterns, but the body could not be found. Eventually they came back.

The learned judge's general comment on this evidence is that the account, however consistent, will sound like a tale. Then he says, its real security is the "death" at dusk and the fact that the body was taken to the cremation ground that night.

In addition to the witnesses who say they actually went to the cremation ground, there were some half a dozen witnesses who speak to the purchase of funeral requisites on the evening of May 8th. These are Durgaprosad Baishy, Laksmi Chand, Mahammad Ashraf Alam, Kedar Nath Pande, Bhakabir Roy and Jangbir Sinha Karky.

A number of witnesses gave evidence that they saw the evening procession, but did not join it. The learned judge has picked out one of them, Nasiruddin Ahmad, as being especially reliable, but does not give in detail the evidence of any of these witnesses. He makes the comment that they would not be believed if death at dusk was not a fact, and then says, if that was a fact, there would be no reason to disbelieve them.

The learned judge also refers to the evidence of Susila Sundari, the lady who says that her brothers went out at night to cremate the Kumar and came back drenched, and there is also the evidence of Iran Chandra (? Jnanendra) Nath Banerjee, who met Anukul Chatterjee coming home wet.

The learned judge seems to have regarded all the witnesses to the evening cremation and the attendant circumstances—with the exception perhaps of Padmini Mohan Neogy—as being more or less in the same category as regards credibility. That is to say, he would not have accepted their story but for the cardinal factor—"death at dusk."

It seems to me that the appellants cannot very well complain of the way the learned judge has dealt with this evidence. He quite obviously was of the opinion that the account given by those who say they attended the evening cremation was superficially, at any rate, more like fiction than fact, and he would not have accepted the evidence, but for the corroboration furnished by certain extraneous matters, and especially by the controlling feature—the time of death.

STATEMENT OF FAKIR ROY—A DEFENCE WITNESS

The learned judge points out that persons seen in the evening procession to the number of twenty-six were named, and these included Anukul Chatterjee and Fakir Roy. The latter was, however, called as a witness

by the defendants. He said that he did not join or even see any evening procession, but did see the morning procession go by. Fakir Roy made the important statement that "there was storm and rain on the night of the day previous to that on which I saw the procession—it was rain-storm like *kalbaisakhs* from dusk to 9 P.M."

An attempt was made in re-examination to do away with the effect of this evidence, so helpful to the plaintiff's case. This re-examination was of such a character that it was really quite inadmissible, and would not have been permitted, had the witness been examined before the court and not before a Commissioner. The learned judge quite rightly, in my opinion, refused to attach much, if any, weight to the denials and evasions elicited in the re-examination, and he thought that the real position was that the witness remembered about the rain (on the night of the 8th May), because it was connected with the conversation the witness had with Anukul Chatterjee. The defendants themselves had helped to establish the fact that there was such a conversation by eliciting in detail the subject matter of it. The learned judge seems to have been quite satisfied that the evidence given by Fakir Roy, pointing to rain on the night before the morning procession—taken in conjunction with the other facts relating to the evening procession—really carried the plaintiff the whole way as regards this part of his case, and upon a careful review of the evidence and the judge's estimation of it, I find myself unable to say that the learned judge was wrong.

DEFENCE ATTACK ON STORY OF EVENING CREMATION

There were three things urged at the trial as especially discrediting the existence of an evening procession. The most important of these was that there was no rain or storm on the evening of the 8th May. Obviously, if there was no rain on that evening, the whole basis of the story of an abortive cremation and a rescue completely disappears, and so, if it were demonstrated beyond all doubt that there was no rain, that of itself would be sufficient to cut away the foundations of the plaintiff's case. At a very early stage, that is to say, shortly after the plaintiff's declaration of identity in May, 1921, evidence had been obtained, which, in the view of J. H. Lindsay, so far established no rain on the 8th May as to enable him, possibly with some other evidence also before him, to issue that so-called Impostor Notice on the 3rd of June, 1921.

QUESTION OF RAIN OR NO RAIN

The question of rain or no rain was one of the many in the case of the kind which, definitely resolved in one way, would put an end to the whole of the plaintiff's case, yet definitely resolved in the opposite way, would not necessarily defeat the defendants or carry the plaintiff all the way.

The defendants naturally attached the highest importance to the rain question, and Mr. Chaudhuri made a great feature of it quite early in his argument before us. The witnesses for the plaintiff with regard to the evening of the 8th May say that rain fell that evening at about 10 P.M. and lasted for about an hour. There was quite a storm—not only rain, but high wind. The witnesses, of course, bring in the rain in connection with the funeral procession they took part in or saw passing. Those of them, who say

they actually went to the cremation ground, depose to the storm which came upon them there, or on their way back after they had deposited the *khat* at the ground, or as in the case of Padmini Mohan Neogy, after he had returned to the Sanitarium. As mentioned above, the story of the rain received support from the evidence of Fakir Roy, a witness of the defendants, who in effect said that there was a short heavy shower with high wind of the kind which is not uncommon at that season of the year. The learned judge thinks it may have been a nor'wester. He saw no reason for disbelieving the evidence of the witnesses regarding rain, or rather, he said, he would believe this evidence, unless it was excluded by something or other outside the rain reports.

RAIN REPORTS

Before us Mr Chaudhuri for defendants-appellants made a great point of these rain reports and Dr B B Sarkar's diary. The records were those of St Paul's, St Joseph's, the Municipal offices and the Botanical Gardens. A record was also kept at the Planters' Club, but that part of it which related to the year 1909 was removed by two men who called at the club two or three years before the trial began, but who they were and whose interests they thought they were serving is not known. Both the St Paul's and the St Joseph's records show no rain between the 4th May and the 11th May, 1909. Having regard to the margin of time between the 8th and 11th May, it is not necessary to discuss the methods of keeping these records. It was not disputed that so far as they go, there was no rain on the 8th. As regards the Municipal offices record, it was in the middle of the trial that the plaintiff called for and produced a copy of the register of 1909. The defendants on their side called for and produced the register of the Botanical Gardens. These Gardens are situated on Victoria Road and are below the level of the Municipal Bazaar. The evidence given on behalf of the plaintiff was to the effect that the rain which occurred on the 8th May fell on the Cart Road or even higher up still, but no witness mentions Commercial Row or the *chowrasta*. Even if their evidence were accurate, there would perhaps have been no rain recorded at the Planters' Club, but one would expect rain in the gauge at the Municipal offices, and so rain recorded in the register there, and also in the Botanical Gardens, as these are not only below the Bazaar, but also nearer the cremation ground. It was agreed by the witnesses, including Dr Calvert himself, that in a place like Darjeeling there may be rain in one place, but not in another. It may be raining high up the hill-side, yet not lower down. In other words, rain in the hills (or for that matter, in the plains) may be extremely localised.

RECORDS NOT SUFFICIENTLY DEFINITE OR UNEQUIVOCAL

If all the records had been reliable, the plaintiff would have been in great difficulty on the rain question, for, not only St Paul's records (these are used by Government and published in the Gazette) and St Paul's, but also the Municipal and the Botanical showed negative as regards May 8th. The plaintiff, however, contended that neither the Municipal offices record nor the Botanical Gardens Register was trustworthy. Mr Chatterjee for the plaintiff respondent made a great point of the fact that the Municipal rain register had been tampered with, and the plaintiff suggested that originally

there had been an entry of "8" (May) which had been altered to "13", but so clumsily that eventually it had to be left as "13" and then crossed through, and a fresh figure inserted above so as to cover up the real purpose of the interference. The learned judge came to the conclusion that it was not possible to say what the original entry had been. He quite rightly declined to speculate about the matter, and held that the entry, which for some strange reason neither party had thought of, neither confirms, nor refutes the rain. For the reasons which he discusses in the judgment, the learned judge also came to the opinion that the Botanical Gardens register, as regards the entries for the month of May, was fabricated, and so wholly unreliable. The learned judge thought that the clerk at the Gardens who was supposed to have kept the register did not keep it at all. One cannot help feeling, on examining the book which was produced in court, that the learned judge was probably right. The condition of the book was certainly very unsatisfactory, though I observed that the water mark in the disputed sheet was the same as that on the other leaves of the book, and there is no reason for supposing that there was really an interpolation. The learned judge left out of account altogether the entry in Dr Sarkar's diary with regard to there being no rain on May 8th, but even so, in my opinion, the learned judge was quite entitled to take the view that the evidence of there being no rain on the 8th May was not sufficiently definite and unequivocal as to rule out the oral testimony of the witnesses.

NO SHED AT CREMATION GROUND

The other two matters urged by the defence as militating against the existence of the evening procession were (1) that there was at all material times a shed or shelter at the cremation ground itself, and so there would have been no need for the running away to escape from the rain, and (2) there were no sheds or huts in the vicinity to which the cremation party could have fled in the way the witnesses described.

Quite clearly, there was nothing in the first of these points, and the putting forward of it could only have been done as a result of some confusion as to when the new cremation ground came into use. It appears that originally a very determined effort was made by the defendants to show that the new cremation ground had always been the cremation ground, and the shed or shelter which stood upon it in May, 1909, had always been there and nowhere else, though it had been reconstructed, and thus the body of the Kumar could only have been taken to this cremation ground and not to any other. Eventually, however, it had to be admitted, after various municipal correspondence and papers had been produced (and the examination of Mani Mohan Sen, who was secretary to the Hindu Burning and Burial Committee of Darjeeling), that the new cremation ground was only made in 1907, and that prior to that year, the ground, which in connection with this case was called the old cremation ground, was still in use.

If one looks into the proceedings without referring to the plan, one might easily suppose that all that happened was an improvement of the existing ground and the reconstruction of the shed. Actually what happened was that there was an entirely new ground opened in 1907, with a properly constructed pyre and a shed which was built out of the materials of the shed which theretofore had stood on the older cremation ground. After 1907, therefore, the old ground fell out of use, and there was no shed or shelter there of any kind. It was, therefore, impossible for the defendants-appellants before

us to argue that the story of rain and rushing to shelter was untrue, because, had there been a shed at hand, there would have been no need for the helter-skelter

EXISTENCE OF SHELTERS IN THE VICINITY

In my view, the learned judge was also right in thinking that the evidence of Morgenstern did not rule out the existence in 1909 of huts or sheds which would have afforded shelter, whether they were the sheds of *malis*, servants and syces or otherwise and as regards the slaughter-house, it is, of course, quite likely that the witnesses were confusing some hut or shed they took shelter in with the present slaughter-house, which undoubtedly was not in existence in 1909. It seems to be not unnatural that persons who were going to be witnesses in the case, as having taken part in the events of the night of the 8th May, should go up to Darjeeling and go over the ground to refresh their memory, and in that event they might quite honestly assume that some building they found near about the scene must have been the one in which they took shelter all those years before, not knowing that the particular building was not in existence at the material time. I do not think it can reasonably be held that because a witness or witnesses sheltered, or rather say, they sheltered, in a building which had not come into existence at the time, that altogether refutes their evidence.

CONCLUSION RE-STATE

In my opinion, the views expressed by the learned judge as regards the rain records, the cremation ground and shed and the shelter-sheds are quite reasonable, and certainly not so unwarranted as to require that we should characterise them as wrong.

The learned judge summarised his conclusions on this part of the case by saying "I have thus found that the facts connected with the *sasan* or the shelters or the rain do not discredit the account given of what happened at the *sasan* on the night of the 8th May, if the body of the Kumar was taken there that night, as it must have been, if he had died at about dusk. The positive evidence that it was so taken is not discredited by these facts." The learned judge had thus worked back in his mind to his starting point, and re-stating the argument, it seems to me to come to this: the illness of which Ramendra Narayan Roy was suffering was not bilary colic, but an inflammatory condition of the intestines due to the introduction of a chemical irritant in the shape of arsenic, and that condition was such and the symptoms were of such a character that there were indications that "death" must have occurred at or about 7 P.M., in which event the body would certainly have been carried out for cremation the same evening. The direct evidence that the death was announced before dinner time, and that there was an evening cremation procession, was not displaced by any of the considerations put forward by the defendants and urged on their behalf as negating these facts.

PLAINTIFF'S CASE HOW FAR AFFECTED BY ADMITTED MORNING CREMATION

There then remained to be considered whether the evening procession was destroyed by the existence of the admitted funeral procession on the morning of the 9th May, when admittedly a dead body was carried out from "Step Aside", taken to the new cremation ground and there burnt to ashes.

I have pointed out in one part of this judgment that the fact that there unquestionably was a morning procession created a very substantial obstacle in the way of the plaintiff. The learned judge summarised the position by saying that the case of the plaintiff is that the body (the one carried in the morning procession) was not that of the Kumar at all, but some other body secured in the course of the night, and it was seen and carried completely covered up and burned at the *sasan* without a single rite. The grotesqueness and the unlikeliness of this story seems to have been fully appreciated by the learned judge, though he did not discuss in detail any of the inherent difficulties relied upon and stressed by the defendants. The learned judge showed that he was fully alive to the difficulties of the situation by observing: "The extreme improbability of this (the plaintiff's) case is obvious, and its real answer is the identity of the plaintiff, and the fact apart from this identity that 'death' had occurred at a little after dusk and the body taken out at night and that body never cremated." The learned judge was, however, not content merely to adopt the attitude that those other circumstances, namely, 'identity' and 'death at dusk' were of themselves sufficient to sweep away the 'extreme improbability' of the story, for he said "The evidence on this point, that is, the question of the morning cremation, must be dealt with on the footing as if these facts have not been found." In other words, he was prepared to consider the question of the morning cremation on its own merits, which, of course, was the right and proper way of approaching the matter.

DEFENDANTS' ARGUMENTS

The defendants, both at the trial and in the appeal, invited the court to take the view that the occurrence of the morning procession—automatically almost—disposed of the possibility of there having been an evening procession, and so destroyed the plaintiff's case of 'death at dusk'. Cremation in the morning necessarily connoted death at an hour not earlier, or at any rate, not much earlier, than the defendants put it, as death could not be 'taken' as having preceded the funeral for any longer period even in Darjeeling. Moreover, argued the defendants-appellants, the explanation put forward on behalf of the plaintiff, based on the idea of a substituted corpse, ought not to be accepted, because of the impracticability and indeed impossibility of Satyendranath Banerjee and Ashutosh Das Gupta procuring another body in the very short space of time at their disposal between the moment when they abandoned the search late at night on the 8th May, and the summoning of the *sasan bandhus* in the still early hours of the 9th May. The defendants contended that the whole idea of getting a corpse to substitute was so fantastic and impracticable that it never would have occurred to these young men particularly as they were strangers in Darjeeling, and with no knowledge of how to set about such an unusual and sinister project as that of procuring a strange corpse in the middle of the night. It was argued that Satyendranath Banerjee could never have secured the co-operation and subsequent silence of the Kumar's staff, and in any case, there was more likelihood of a scandal arising, because a strange body had been burned as that of the Kumar, than if the cremation party had merely burnt an empty pyre on the 8th.

CONSIDERATIONS ON THE OTHER SIDE

There are, of course, many considerations to be taken into account for the purpose of deciding whether the plaintiff's explanation of morning cremation can possibly be true. Not the least of these is the fact that

according to the plaintiff's version there must have been a broadcast summoning of *sasan bandhus* both in the evening and in the morning, yet there was no over-lapping as regards those who responded to the two calls respectively. Nor apparently did any comment arise or excitement manifest itself at the time the condolence meeting was held about a week after the cremation. The existence of the morning cremation undoubtedly tells heavily in favour of the defendants. On the other hand, upon the assumption that the plaintiff is an impostor, fraudulently put forward by Jyotirmoyee Devi and her associates, the position would appear to have been something like this. Owing to a superficial resemblance between the sadhu who was on the Buckland Bund in the early part of 1921 and Ramendra Narayan Roy who had been cremated in Darjeeling years before, Jyotirmoyee Devi and her associates made up their mind to induce the sadhu, *i.e.*, the plaintiff in this suit, to pose as a man he had never seen and about whom he knew nothing, and then found themselves faced with the problem of how to get over the cremation of the 9th May, and for that purpose invented a story so fantastic as immediately to suggest fiction rather than truth, and which depended on certain basic factors, all of which, as the eventual investigation in a court of law showed, were, at any rate, not without some foundation. I refer, for example, to the symptoms of the illness, the ambiguity and uncertainty as to the precise nature and extent of the medical treatment and attendance, which made the story of death at dusk not altogether impossible, the evidence of the Maitra group, (and) the existence of an old cremation ground without a shed or shelter, which rendered the rain and storm story at least a possible one.

PROBLEM BEFORE THE COURT

Looking at the matter, therefore, from the point of view of each side, it seems to me that the problem which confronted the learned judge as arising out of the morning cremation was this. Was the positive evidence as to the morning proceedings and the identity of the corpse which was burnt on the 9th May sufficiently definite and reliable as to require a finding that it was none other than Ramendra Narayan Roy that was cremated on the 9th May, and so there never could have been an evening procession at all?

CASE OF A SUBSTITUTED BODY

In considering the question of the morning cremation it must be borne in mind that the matter of a substituted body was raised in the Defamation case instituted by Ashutosh Das Gupta in the year 1921. One recalls that the prosecution in that case was to all intents and purposes conducted by the Bhowal Estate, and the defence was financed out of the monies raised by subscriptions for the present plaintiff. In the Defamation case the defendants put forward the story that the body of Ramendra Narayan Roy was taken out for cremation at night, but was never burnt, as the cremation party were driven away by rain and storm, and Ramendra Narayan Roy was rescued by sannyasis. The defence made the specific case that a man named Pemguche Lepcha was missing from the Darjeeling hospital from the night of the 8th May, and that it was the body of this man which was burned as the body of Ramendra Narayan Roy on the 9th May. The present plaintiff was, of course, not in form a party in the Defamation case, and so he

cannot be taken as responsible for what was done in that case, but actually in the memorial submitted by the plaintiff to the Board of Revenue in 1926, he accepted the story about Pemguche as true, and moreover, when J H Lindsay was being cross-examined at the time he was giving evidence on commission in the present case, the story was put to him as if it was a well-known fact. During the appeal, however, Mr B C Chatterjee informed us that although he did not rely upon the story as furnishing an explanation of whose body it was that was burnt on the 9th May, and did not give any evidence in support of it, he had not entirely given it up. Mr Chatterjee's argument was that the burden of proving how and whence a substituted body had been obtained did not lie upon his client. One can only assume, of course, that Mr Chatterjee's attitude indicated that the plaintiff was not, after all, in a position to show whose body it was that was burnt as being that of Ramendra Narayan Roy.

DEFENCE STORY OF MORNING CREMATION

There were a great many witnesses examined on the matter of the morning procession. Besides Bibhabati Devi, Satyendranath Banerjee, Birendra Banerjee, Ashutosh Das Gupta, Anthony Morel and the *khansama* Bepin, there were some thirteen witnesses examined on commission and twenty-two in court at the trial. The account given by Satyendra and Jagat Mohini, the nurse, was this: Ramendra Narayan Roy died at midnight. Bibhabati Devi remained all night clasping the dead body and Jagat Mohini was clasping her, all in the room in which Ramendra died. The doctors had departed, "melted away", as Satyendranath Banerjee puts it in his diary. Satyendra Banerjee says that he sent a slip of paper to his friend, Rajendra Sett, who was staying in the Sanitarium, telling him that the Kumar was dead, and Satyendranath Banerjee also sent a similar note to his cousin, Shyamadas Banerjee, who was in the Cutchery Building. Towards dawn, say, at about 3 or 4 P.M., some people arrived, and later quite a number of people. The body of the Kumar was brought down in the morning, placed on a *khat* in the compound by the front door of the house, and after flowers had been placed upon it, the *khat* was carried away in a procession to the burning ground. Two Gurkha guards went ahead with reversed arms, and pice and other small coins were scattered as the procession proceeded. According to the defendants, the route taken was the Thorn Road route, and not the Commercial Road route, so that the procession went past the Hospital and down to the Cart Road past the Cutchery Building and the market, until it reached the goods station and thence down to Ferndale Road. The point of making the route the Thorn Road was that the procession after passing the hospital would lower down go past Balen Villa, the house of M N Banerjee, the Government pleader of Darjeeling, whose daughter-in-law, Gita Devi, gave evidence in the case. Suryyanarain, the uncle of Bibhabati Devi, was living in a part of the Banerjee's house as a tenant. At the cremation ground the usual rites were performed, and the body was cremated.

DEFENCE EVIDENCE IN BRIEF

The learned judge has set out in full in the judgment a list of the witnesses. Of the 13 witnesses examined on commission, 12 were present at the cremation, but of the witnesses examined in court, none except some of those who were inmates of "Step Aside", and two others, Satya Prosad Ghosh (Vol 14,

p 287) and Nanda Gopal Gargari (Vol 14, p 353), went to the cremation ground. Some only saw the procession go by, and were called in order to establish the Thorn Road route—these were Phiva (Vol 12, p 377), Lofts (Vol 12, p 401), Purna Banerjee (Vol 14, p 275), Panchanan Maitra (Vol 14, p 364) and Holland (Vol. 15, p 413). The rest of the witnesses merely went to "Step Aside", saw the body brought down from the first floor to the compound and placed on the *khat*, or saw the body only after it was on the *khat*, and saw the *khat* borne away. Some of them speak to the Thorn Road route also. All the witnesses who gave evidence on commission, except Gita Devi, came to "Step Aside" in the morning or earlier, and took part in the proceedings from first to last. The account given by them is to the effect that the body was upstairs lying in the room in which death had occurred (i.e., the second from the porch end of the house) till about half past seven or eight o'clock. It was then brought down and placed on a *khat* in the compound, flowers were put upon it, and it was then covered with a shawl and more flowers placed on top. The *khat* was then carried to the cremation ground. There the usual rites were performed, the body was bathed, anointed with ghee, dressed with a new cloth, a *pinda* (funeral cake) was offered, *mantras* were recited, and after the body was placed on the pyre, Birendra Banerjee performed *mukhagni*, and the pyre was set alight. Birendra Banerjee then rolled on the ground with grief, and Sarif Khan, in an excess of emotion, became violent and tried to throw himself on the burning pyre but was prevented. These last mentioned two details were admitted on the plaintiff's side (see P W 603 and P W 823). The witnesses who gave this account had all come in the morning, and four of them even before dawn. They were Benoy Mukherjee of Bally, Rajendra Sett (also of Bally), who came from the Sanitarium, and Shyamadas Banerjee (of Uttarpara) and Anukul Chatterjee from the Cutchery.

PLAINTIFF'S WITNESSES

On the plaintiff's side there were four witnesses, all of whom say that they joined the morning procession at "Step Aside", and went to the cremation ground, and stayed till the end. These are Basanta Kumar Mukherjee, Swami Oankarananda, formerly Kshetranath Mukherjee, Ram Sing Subha and Nalini Kanta Chakravarty.

The learned judge rejected, and quite rightly in my opinion, the evidence of this last witness, saying that he had been utterly discredited by a previous statement made by him before N K Roy during the course of the enquiry at Darjeeling in 1921. When Satyendranath Banerjee and S P Ghosh went to Darjeeling in May, 1921, statements were obtained not only from Nalini Kanta Chakravarty, but also from Kshetra Nath Mukherjee. The learned judge regarded with considerable suspicion the methods used to get these statements, and remarks that less than 11 days after the plaintiff declared his identity, the idea had occurred to get this "uncovering of the body from the witnesses, and to pin them down". The learned judge did not think there was any material difference in the statements made by Basanta Mukherjee and Kshetra Mukherjee in Darjeeling as compared with their evidence in the case.

Basanta Mukherjee's evidence was to the effect that Jagat Mohini, whom he knew, came to him on the morning of May 9, and informed him that the Kumar of Bhowal was dead, and invited him as a Brahmin to come to the funeral. She asked him to go to "Step Aside", and

he went there, arriving about 8 A.M. He found the dead body wrapped in a cloth and lying on a *khat* in the yard. He says that the whole of the body was so wrapped up that he could not see the face or any part of the body. Twenty or twenty-five minutes after Basanta Kumar Mukherjee reached "Step Aside", the procession started, and he went with it. He says "I went with it, but did not put my shoulders to the bier. The body looked tall, not shorter than I, may be a bit taller. In our country bodies are never left untouched, but this body in the yard nobody was keeping in touch, though there were people moving round it. A young lady was weeping upstairs. I saw her, and was told she was the Ram. Nobody else was weeping, but they were all sad." This witness says that the procession went by the Commercial Row route, and not Thorn Road.

Describing what happened at the cremation ground, Basanta Kumar Mukherjee said "At the *sasan*, it was the new *sasan*, the body was placed on a partly formed *chita* (funeral pyre). Such *chitas* are kept there. The body, wholly covered as before, was placed upon the *chita*, cloth and all. Ordinarily the dead body of a Hindu is bathed. This corpse was not bathed. *ghee* was not rubbed over it, nor was it made to put on a new cloth. The usual *pindas* offered before *mukhagni*, were not offered. I have never seen any corpse burnt in this manner, in the manner this way. For this corpse a boy looking seventeen or eighteen was asked to do *mukhagni*. He began to cry. Then I moved away a little, and did not see whether the *mukhagni* was in fact done. I moved away twenty or twenty-five feet off, but was in the compound. At the time the boy was asked to do *mukhagni*, wood was piled on the top of the body. I saw the *chita* burning after I had moved away a little. I did not wait till the end, but for 1½ or 2 hours. So long as I was there, I did not see Jagat Mohini or any woman."

SWAMI OANKARANANDA

This evidence was corroborated by that of Swami Oankarananda. He also says he was summoned by Jagat Mohini on the morning at about 6 o'clock or a little after. He went to "Step Aside", and saw the dead body brought out wholly covered up, and placed on the *khat* in the yard. He saw it taken to the *sasan*, and there burned wholly covered up without any of the proper rites. He makes the definite statement "Not a single Hindu rite was observed, and not even a *pinda* was offered." The appellants complained that the learned judge had omitted to make any reference to the witness's statement that the old *sasan* was in an abandoned condition, or any reference to what was said in cross-examination, but I see no reason for supposing that the learned judge did not give any adequate consideration to the whole of this witness's evidence, and then accepted that part of it which indicates that the morning cremation was not carried out with due formality and ceremonial. Much was made of the fact that the witness stated that when the cloth moved, he could see that the body was that of a fair complexioned man.

RAM SING SUBHA

Ram Sing Subha who, according to his own evidence, had seen a dead body at dusk on May 8th, and had seen Dr. B. B. Sarkar at "Step Aside", says that he was awakened in the middle of the night by a servant from "Step Aside" named Shree Lal, but did not go there until the morning. He was

asked by Satyendranath Banerjee to get a *khat* and other things for the funeral from the bazar, and he did so. He went with the procession. He too says that the corpse was never uncovered. A great deal of criticism was directed against this witness mainly on account of his statements concerning a visit by him to "Step Aside" on the evening of the 8th, and because he denied having been a *tadbirkar* for the plaintiff until he was confronted with his own writings on the matter. No doubt Ram Sing Subha was not a very satisfactory witness, and it seems that it was with some hesitation that the learned judge accepted his testimony. There is no reason to suppose that the learned judge did not apply his mind conscientiously to the question of the credibility of this witness, and I find myself unable to hold that the view taken by the learned judge was so wrong that it ought to be set aside. It was urged on behalf of the appellants that this witness was a deliberate perjurer. I am unable to agree with that contention.

DEFENCE EVIDENCE AGAIN

As regards the evidence on the defendants' side, as already stated, the witnesses who were examined on commission, other than Gita Devi, all went to the cremation, and all of them, except one, namely, Kshetra Mohan Bhattacharyya (*sic*), went to "Step Aside". The latter arrived too late to start with the procession, but he went after it, but only reached the cremation ground after the body had arrived there. Another of the commission witnesses, Kanai Ram Mukherjee, did not actually go into the house, but accompanied the procession just as it was setting forth. As the learned judge points out, one part of the case before the trial was that certain persons came before dawn, including Rajendra Sett and Bejoy Mukherjee from the Sanitarium after they had received Satyendranath Banerjee's note, and Anukul Chatterjee and Shyamadas Banerjee. And as to those who came in the morning, stress was laid on what was done at the cremation ground, rather than on the seeing of the body at "Step Aside" before the procession started out.

KASISWARI DEVI'S PRESENCE AT "STEP ASIDE"

One of the most important incidents in the morning's events from the point of view of the defendants, and upon which much emphasis was placed, was that Kasiswari Devi, the wife of M. N. Banerjee, is said to have come to "Step Aside" with her son, Balen, and Kasiswari Devi took charge of Bibhabati Devi with a view to comforting her in her grief, while Balen was arranging the funeral. Another son, R. N. Banerjee, gave evidence that he too was there, assisting in the arrangements, but the curious thing is that he was not mentioned by any one except inferentially by Dr. Pran Krishna Acharyya. Nor was R. N. Banerjee or his mother, Kasiswari Devi, mentioned by Satyendranath Banerjee in his diary. His presence was testified to by his sister-in-law, Gita Devi, who said, she saw him in the procession, as it was passing "Balen Villa", which she could not have done unless the procession went by the Thorn Road route. It was for this reason that the route of the morning procession was disputed. It was said on behalf of the plaintiff, and evidence was called to that effect, that R. N. Banerjee was away, attending another function on the day in question, and it seems highly probable that the learned judge was right in coming to the conclusion that he did not believe that R. N. Banerjee was there at all, that is to say, taking part in the morning procession. R. N. Banerjee gave his evidence in March, 1933 at Mirzapur, where he happened to be at the time, and the circumstances and the manner in which it was given lead one to think

that he was not telling the truth. The evidence itself is, to my mind, entirely unconvincing, and I agree with the views of the learned judge with regard to it.

The evidence of Jagat Mohini Devi is equally unconvincing, and I think the learned judge was right in the view which he took as regards the alleged presence of Kasiswari Devi at "Step Aside".

EVIDENCE OF DR PRAN KRISHNA ACHARYYA

The plaintiff has placed great reliance on the evidence of Dr Pran Krishna Acharyya. He was a well known physician from Calcutta who was staying in a house called "Mall Villa" situated just below "Step Aside", and in the morning of May 9 he was called to "Step Aside" by a nurse. Apparently, at the trial it was suggested that the nurse in question was Jagat Mohini, and in the early stages of the argument before us, Mr B C Chatterjee clearly gave us to understand that this was his case on this point. Subsequently, however, he withdrew from that position, and stated that it must have been the other nurse. We do not know what was said. Dr Pran Krishna Acharyya's own recollection is by no means clear, and in the letter which he sent to J H Lindsay on the 24th August, 1921, he stated that he had forgotten all about the incident, but he did say that although he was the first medical man who arrived immediately after death, the relatives did not want to know from him if the life was extinct. "I remember this, as it appeared to be a little strange." The letter was put in by the defendants. When Dr Pran Krishna Acharyya gave evidence on commission, he stated that the sun had risen and he was having tea, when a nurse whom he did not know called at his house and said that the Kumar was dying or dead. He does not remember which. The nurse asked him to come, and he went to "Step Aside" at about 6 A.M. When he got there, he saw a body wholly covered. He could not say whose body it was. He moved to examine the heart, with a view to ascertaining if life was extinct, but as he approached the body, some of those present said "It is the corpse of a Hindu, do not touch him." It was his impression that the body was lying on a *khat*.

The whole point is, why was he called to see the body, and then sent away without being allowed to do any thing? The suggestion put forward on behalf of the plaintiff was that the doctor was fetched at the instigation of Satyendranath Banerjee, in the hope that the doctor would certify the death without seeing the body, and so give support to the design of passing off a strange corpse as being that of the Kumar of Bhowal. The learned judge points out that as the doctor was a Brahmo, he would be useless for cremation purposes. No doctor would officiously wish to see a dead body. According to his own evidence, Dr Acharyya saw the body wholly covered up. If, as he thinks, the body was already on a *khat*, it was not upstairs, but as the learned judge says, the doctor's memory as to the *khat* is not very exact, and so it would not be possible to say on that ground alone that the body was downstairs, as the plaintiff contended, and not upstairs on the floor, as the defendants say. The defendants by the evidence of the inmates of "Step Aside", supported by that of some of the witnesses who came in the morning, made the case that the body was not brought down from upstairs until 7 or 8 o'clock in the morning. According to the defendants, Bibhabati Devi was clinging to her husband's body till it was almost forcibly taken from her and brought down. Yet she did not see Dr Pran Krishna Acharyya, and nobody recollects this visit of the doctor which undoubtedly took place.

DEAD BODY LYING DOWNSTAIRS

The learned judge draws the conclusion that the whole story about the body being upstairs till 8 A.M., and Bibhabati Devi clutching it until it was taken away, is entirely false. In this connection, the learned judge refers to the evidence of Mahendra Banerjee,—one of the witnesses who gave evidence on commission,—who said that the body was brought out from a room adjoining the verandah of the house. Mahendra Banerjee himself was on the verandah. Bijoy Mukherjee says that he was seated in an outer room and the body passed through this room. The learned judge reached the conclusion that the body was in a room downstairs. The importance of this is that the plaintiff contended that the body which was carried out on the morning of May 9 was never in any room on the upper floor of "Step Aside" at all, but was in one of the lower rooms of the house, a fact which indicated that it was not the body of the Kumar, as the defendants say, but was some other body which had been secretly brought into the house in the course of the night. Thus, the finding of the learned judge as to the location of the body when the *sasan bandhus* arrived in the morning means that he accepted the plaintiff's version of the matter. On a review of all the relevant evidence, I see no reason for disagreeing with the finding of the learned judge.

STORY OF RESCUE

We now come to the story of the Rescue. The learned judge points out that the fact that the body, which was taken to the cremation ground in the evening, and left unattended during the rain, and disappeared whilst the cremation party were away sheltering from the storm, is of itself no proof that the body was alive, and the learned judge took the view that the real proof is that the plaintiff is the same man, looking to his body, its features and marks, and to the evidence of persons who say that he is the same man. The learned judge makes it clear that that evidence need not be accepted on the ground of the credibility of the witnesses alone, though he would have been prepared to do so. He accordingly discussed the evidence given for the purpose of showing that the body was alive, and that the Kumar was rescued by a party of sannyasis who took him away with them, and with whom he remained for a period of nearly 12 years until he came to Dacca.

The learned judge regarded the evidence of rescue with a certain amount of scepticism, for, he said, nobody will accept this evidence, or accept it as proof of identity, if identity were not otherwise proved, and he adds—granted the identity, there would be no reason to reject it.

I have already pointed out that it was never argued by any one in the course of the trial that Ramendra Narayan Roy might be still alive, and yet the plaintiff is not he, and so in my opinion, the learned judge showed great scrupulousness in examining the positive evidence with regard to the rescue and subsequent history of Ramendra Narayan Roy as between the time when the body disappeared from the *sasan* in Darjeeling and the appearance of the plaintiff in Dacca.

IDENTITY GRANTED—A CLEAR AND CONSISTENT STORY

The defendants-appellants asked the court to reject the whole story of the evening cremation party on the ground of the inherent improbability, and

indeed absurdity, of the rescue story, but the learned judge took the view, and I think quite justifiably, that assuming identity to have been proved (and this of course means "proved" in the sense in which the expression is used in the Evidence Act), the story of the rescue given in evidence is clear and consistent and was unshaken in cross-examination. The plaintiff's own account was that after he became unconscious at "Step Aside", he eventually, on returning to consciousness, found himself in a hut in the company of four sannyasis, who took care of him and nursed him until he left Darjeeling with them. He gives the names of these sannyasis as Dharam Das, who was the *guru* of the party, Pritam Das, Loke Das and Darsan Das,—all of them Nagas. The story of the rescue was narrated by Darsan Das, who gave evidence in the case, and it rests practically on his testimony alone, though he was corroborated in some particulars by three other witnesses.

DARSAN DAS'S ACCOUNT

The defendants appellants sought to discredit Darsan Das by reason of the fact that the witness had been well known for a considerable time in the Dacca district as a sadhu named Gopal Das, and they emphasised the fact that although he must have been fully aware of the plaintiff's declaration of identity, and of all the excitement and controversy that declaration had caused in the neighbourhood, he did not come forward and reveal himself as a person, having knowledge of the plaintiff and the story of the adventures of Ramendra Narayan Roy and the rescue, until a very short time before he gave evidence at the trial. The explanation given by him for his silence was to the effect that Dharam Das, the *guru*, had forbidden, or at any rate, advised, him not to make known his connection with the matter. Upon the assumption that the plaintiff's account of how he came to return to Dacca is substantially accurate, I do not see anything impossible or even improbable in this attitude.

"READS LIKE A FAIRY-TALE"

It is not necessary to recapitulate in detail the story told by Darsan Das in the witness box. The learned judge was fully alive to the unusual character of the story. On the face of it, it was no doubt fantastic to a degree, and it seems that despite its clarity and consistency, the learned judge would never have accepted it, had it stood entirely by itself. The learned judge's comment was: His account reads like a fairy tale, and if the plaintiff needed it to establish his identity, he would fail, for, it can no more be "found" upon this testimony than it can be "found" upon his testimony that he is the Kumar. The learned judge even went so far as to say: "It may be that this witness has been taken to the spot and has been tutored by somebody", but he added: "Even then I would expect such a witness would break down. He did not. He stood cool and collected in the box, and gave his account with the air of a man speaking from memory, and the memory of an illiterate man for detail." The manner in which the witness gave his evidence obviously made a very favourable impression on the mind of the learned judge.

A STRIKING FEATURE ABOUT THE STORY

What strikes me about the story, as indeed about much of the plaintiff's case, particularly as regards the events in Darjeeling, is that, viewed in the

light of ordinary human experience, the whole thing is so improbable and so contrary to the normal events of life that it could scarcely have been invented, or that, being invented, it would not have been possible, even in a country where much false evidence is comparatively easily obtainable, to procure and teach a witness willing and able to put forward such a fantastic story in a witness box, and having done so, to withstand a vigorous examination so successfully as to win the approbation of a learned and experienced judge. In my opinion, the fact that the bearing and demeanour of Darsan Das created so favourable an impression in the court below renders it extremely difficult for this court to take a view of his evidence contrary to that of the learned judge. No doubt, there is much in the circumstances of the rescue,—as, for instance, the question of why the sannyasis did not make their presence known and restore the “dead” man to his friends when they returned to the cremation ground, and why did they retain control of the man they had rescued from an untimely death. Some explanation of all this was, however, given by Darsan Das, and having regard to the known peculiarities of sannyasis and their kind, it may perhaps be not altogether incredible.

In any event, given the premature “death”,—the rain and the scattering of the cremation party,—there is nothing so absolutely impossible in the rescue story as to make it incumbent on the court to hold that it could not have happened. The medical evidence given on behalf of the plaintiff shows that extraordinary as the whole thing was, including the loss of memory, it was not outside the bounds of possibility, and indeed so far as the loss of memory part of the story goes, the learned counsel for the defendants quite frankly admitted that it was not necessary to discuss or consider the matter as coming within the purview of morbid psychology, split personality or dual personality or anything of the kind, the sole question being whether in fact events happened as the plaintiff says.

The learned judge expressed the opinion that the account of the rescue given by Darsan Das got “richer and richer in detail in cross-examination”, breaking down nowhere, not even on points of topography in so difficult a part of Darjeeling, changed out of recognition since 1912 when the new Sudhir Kumari Road was opened, all trace of the old *sasan* gone. One has only to view the *locus in quo*, as we did for ourselves, to appreciate the force of this comment. The three witnesses who supported a part of the story told by Darsan Das were Girija Bhusan Roy, Srish Chandra Gupta and Bejoy Krishna Gupta.

CORROBORATION OF DARSAN DAS

Girija Bhusan Roy stated that his maternal uncle, a retired government official at Darjeeling, kept in a street known as Judge Bazar a *kabiraji* shop, and that for the purpose of making drugs, he had a small factory situated on a path leading down to Sidrabong at a point to the west of the old cremation ground. Srish Chandra Gupta was in charge of this factory, and lived in one of the rooms of the hut which constituted the factory. In another of the rooms Girija Bhusan Roy kept some kind of loom for making “puttoos” (a rough sort of Kashmir tweed) and blankets. Close to the main hut was another hut, something in the way of an out-house or godown. Girija Bhusan Roy was living at Darjeeling from 1906 down to 1918. According to his account, on receiving certain information, he went down to the factory one day and found four sannyasis in the godown. There was another man there lying sick, and who, the sannyasis said, was one of them, and whose illness the

sannyasis mentioned as the reason for their having gone into the godown. Gīrija did not take any particular notice of the sick man who was lying on the *khatia* and seemed to be unconscious. At the request of the sannyasis Gīrija gave them a blanket, and told them they might remain as long as they wished. The story told by Gīrija Bhusan Roy was corroborated by Śrīśh Chandra Gupta and Bejoy Krishna Gupta, a relation of Gīrija's, who happened to be staying with him at the time. Gīrija indicated the position of his factory as being situated between the garden of a *sahib* (Morgenstern) and certain terraced fields under cultivation to the west, the factory being on the road to Sidrabong.

The evidence of these three witnesses was severely commented upon by the learned counsel for the defendants, owing largely to the way in which they were procured to give evidence for the plaintiff, but also by reason of the inaccuracy of the description given as to the exact location of the factory.

LOCATION OF BLANKET FACTORY

Śrīśh Chandra Gupta said "Our *karkhana* was to the south of Kagjhora. It is fifteen or twenty minutes' walk from Kagjhora. One goes downhill and after crossing the *ghora* uphill. It is difficult to express the distance in miles. It takes fifteen or twenty minutes to go from Kagjhora to the *karkhana*. There is a *rasta-kutchā* road. I can't say if it is a municipal road. It is called Sidrabong Road. The *karkhana* is on the Sidrabong Road. The four roomed *ghar* was known as *karkhana*. Municipal tax had to be paid for it." The comment which was made on this statement was to the effect that if municipal taxes had been paid in respect of the building, one would have expected it to appear on the municipal map and to be mentioned in the municipal records, whereas the contemporary municipal map does not show any such building and no municipal records were produced. Gīrija Bhusan Roy gave a description of the two alternative ways taken by him when going down to his factory, but as we saw for ourselves, the routes described by this witness are not such as any one would be likely to take on going from Judge Bazar to the spot at which, according to the evidence of these witnesses, the factory was situated. Even Mr. B. C. Chatterjee for the plaintiff respondent was constrained to admit that the witnesses must have been in error as regards the situation of the factory and/or the route taken to get to it. The learned judge discusses the matter at some length, including the evidence given by the defendants, and he was driven to the conclusion that the point is "extremely obscure", but even so, he did not think that the topographical obscurity, if one may so term it, was sufficient to destroy the value of the corroborative effect of the evidence of the three blanket factory witnesses.

It seems to me, therefore, that the learned judge, upon a careful consideration of all the evidence relating to the rescue, was fully satisfied that there was nothing so inherently incredible about it as would, to say the least of it, destroy or even militate against the evidence of identity, which he had already found to be satisfactory and sufficient to show that the plaintiff and Ramendra Narayan Roy were one and the same man.

GENERAL CRITICISMS OF JUDGMENT CONSIDERED

Returning now to the general criticisms made by the learned counsel for the defendants, as described and set forth in the earlier part of this judgment,

I do not think it necessary for me to deal with them in any great detail, as this part of the case will be fully discussed in the judgment of Mr Justice Biswas. I have had the advantage of reading and considering his views on this topic, and I am able to say that I am in entire agreement with them. I will, however, say that it seems quite clear that what Mr Chaudhuri did was to endeavour to focus our attention upon a number of passages in the judgment of the learned trial judge, which, taken out of their setting and put before the court as isolated propositions, appeared to afford some support to the learned counsel's contentions, and I am clearly of opinion that this was to do but scant justice to the judgment read as a whole, and that on a proper or fair consideration of the judgment taken as a whole, it is impossible to hold that the learned judge did not properly and fully examine all the evidence put before him, and then come to an independent finding on all the material points in the Darjeeling chapter. In my opinion, it is not true to say that the learned judge did not arrive at a straight conclusion of fact on the evidence touching each particular point. I have no doubt whatever that the learned judge brought his mind to bear upon all the facts and arguments placed before him, and that he came to a definite conclusion that he could not accept the defendants' case regarding death and cremation by which it was sought to annihilate the plaintiff's claim to identity.

CONCLUSIONS ON DARJEELING CHAPTER

The result is that I think that we ought not to hold that the five questions put forward by Mr Chaudhuri for our consideration, as stated in an early part of this judgment, were not fully and properly dealt with by the learned judge, and so the answers to these questions must be taken to be .

- 1 The second Kumar did not really die, but was merely in a comatose condition when his body was carried to the cremation ground
- 2 The apparent death occurred in the early evening, as the plaintiff said
- 3 The second Kumar's body was taken to the cremation ground on the night of the 8th May, but it was not cremated
- 4 Having regard to the fact that the cremation of a body on the 9th May, 1909, was admitted, that body was not the body of the second Kumar and must have been a substituted body
- 5 The plaintiff's case as to his rescue by sannyasis and his life with them is substantially true

These answers as I have indicated represent the definite findings of the learned judge, and as in my opinion, the learned judge in no way misdirected himself or failed to give adequate and proper and independent consideration to the evidence, it would not be right for this court to interfere, whatever might have been our own view of the case, had we been trying it at first instance. It may perhaps be that time was on the side of the plaintiff, and that had the issues in controversy between the parties been adjudicated upon at an early stage, the result might have been different, but as to that, we cannot speculate. We can only adjudicate upon the matter upon the basis of the evidence on record.

PERIOD MAY, 1909 TO DECEMBER, 1920

I proceed now to deal fully with some of the salient features of the other part of the case

During the hearing of the appeal, I formed the impression that if the defendants-appellants could not succeed in satisfying the court that Ramendra Narayan Roy actually died and was cremated in Darjeeling, they would have great difficulty in displacing the evidence on record touching the question of identity, and that once the difficulty arising from the existence of the morning cremation had been surmounted, the path of the plaintiff would be comparatively easy, having regard to the overwhelming evidence he had been able to put before the court below on the matter of physical identity and the recognition by the relations and others

The learned judge, when discussing the period May, 1909 to December, 1920, and the plaintiff's account of his life during that time, made the remark that "All this sounds absurd", but added the comment, "but not more so than some of the cases observed, studied and recorded in authoritative books by scientists" Fortunately, by reason of the admission made by the learned counsel for the defendants-appellants that there was nothing impossible in the plaintiff's story, and it was merely a question of whether in fact things happened in the way the plaintiff described, it was not necessary for us to consider any abstruse questions of psychology, morbid or otherwise, and the evidence of the medical witnesses on this point became to a large degree irrelevant or at any rate unhelpful. The combined effect of the evidence of the experts seems to have been such as to justify the learned judge's observation that "In short there is no law by which you can exclude the plaintiff's account, as you can exclude his flying in the air by gravitation" As the learned judge mentions, Mr Chaudhuri reasonably asked why it should be supposed that in the plaintiff's case unusual features occurred, and the learned judge gave the answer which was an eminently reasonable one that from Darjeeling to this point (*i e*, the plaintiff's appearance in Dacca) the enquiry is not to establish identity, but to see if anything excludes it, the identity being established by other facts. If that is proved, there is nothing from Darjeeling to the plaintiff's arrival in Dacca that could shake the conclusion, and given the identity, there will be no reason to reject it on the ground that it involves a breach of a law of nature. It involves no such breach.

(1) LIFE OF THE PLAINTIFF

The period between May, 1909 and December, 1920, has to be considered in two parts,—namely, the life of the plaintiff on the one hand, and the events of Jaidebpur on the other.

The account which the plaintiff gives of his life during this period rests on his own testimony and that of the sannyasi Darsan Das *alias* Gopal Das. The plaintiff says that he regained his consciousness in a hut in the midst of jungle and hills and found himself among the four sannyasis he named. He says, during that period he had no talk with the sannyasis. "I do not remember what happened after that. I went with the sannyasis. We went on foot and also by rail. The next thing I remember is that I was at Benares at Asighat. The four sannyasis were with me still. At Asighat we stayed in a sannyasi's *ashram*. We met others, up-country and

Bengalee sadhus I met two Bengalee sadhus I spoke to them I spoke to them in Bengali I spoke to the upcountry sadhus in Hindi I was speaking to the four sannyasis I mentioned in Hindi, and they spoke to me in Hindi too At this time I had lost all memory of who I was" The rest of the period was spent in wandering from place to place, from one shrine to another, in the company of the sannyasis In the course of his wanderings the plaintiff arrived at Amarnath in Kashmir This was some four years after he was at Asighat At Amarnath the plaintiff took *mantia*, and he became the *chela* of the *guru* Dharam Das, and the name of the *guru* was tattooed on the plaintiff's arm by a tattoo man in Srinagar Bazar From Srinagar the plaintiff passed from place to place,—another long series of wanderings until he came to Nepal From Nepal they went to Tibet, and then back again to Nepal, and whilst at a place called Braha Chhatra in Nepal, the plaintiff's memory came back to him to the extent that he could recall that his home was at Dacca, and he was allowed or directed by the *guru* to start off alone for Dacca, upon the understanding that if, after subjecting himself to the test, he could overcome *maya*, he would return and meet his *guru* at a place called Hardwar, and then become a full-fledged sannyasi

CRITICISMS OF PLAINTIFF'S STORY

The plaintiff's story is no doubt full of inconsistencies and even contradictions, but in broad outline it holds together, and upon the assumption that whilst in Darjeeling he had received a severe shock to his mental system, it is not so wildly improbable as to be impossible One of the strongest arguments against the plaintiff arises from the fact that in the early stages of his career after his return to Dacca and Jaidebpur, he never gave out any clear story as to why he had stayed away from his home and his relations for such a lengthy period, and it is no doubt greatly against him that the story he eventually told in the memorial he presented to the Board of Revenue in 1926 makes quite a different picture from that he eventually put forward in the witness box At the same time, however, it does not seem to me altogether surprising that if the plaintiff had in fact undergone the kind of experience necessarily attendant upon a life amongst sannyasis, he would be very confused in his mind as to what really had happened to him The fact that the plaintiff at different periods gave varying accounts of his life during what one may call the "dead" period, does not in my opinion necessarily mean that the main framework of the story is altogether untrue

PHANI'S DIARY OR "LESSON-BOOK"—A FALSE "MEASURING-STICK"

No doubt the evidence given by the plaintiff in the witness box was in many ways unsatisfactory and unconvincing, but I am definitely of opinion that the learned judge's adverse comments on the nature of the cross-examination were fully justified, and a great deal of the sting of the cross-examination such as it was disappears, when one brings to mind that deplorable document which was referred to in the case as "Phani's diary", or "Lesson Book", as the judge terms it A more bare-faced and disgraceful exhibition of an attempt to coach a witness can rarely have been seen in any court of law It seems obvious that what was aimed at was to qualify Phani Banerjee to serve as a sort of gauge or measuring-stick by transforming him mentally at any rate into the image of Ramendra Narayan Roy, so that he could in effect say "What I know, Ramendra himself knew", and then to contrast with this paragon of

knowledge the admittedly ignorant and illiterate plaintiff. One has only to compare the entries in Phani's book with some of the questions put in cross-examination of the plaintiff to understand how the design was intended to operate. It is small wonder, therefore, that the learned judge regarded Phani Banerjee as a witness whose credibility was worth nothing at all.

NO SPURIOUS KNOWLEDGE OR ANTECEDENT CRAMMING

The learned counsel for the defendants-appellants, faced with an awkward question from the court, frequently harked back to certain stupid and ridiculous answers given by the plaintiff on the subject of racing and shooting, and in particular, his answers about the Viceroy's Cup and the form of the bullets used in the shoot with Lord Kitchener, but I am disposed to take the view that Mr B C Chatterjee's submission was correct,—namely, that if the plaintiff was an impostor, who had been prepared and rehearsed in order fraudulently to play the part of Ramendra Narayan Roy, the persons responsible for his instruction and training would have been careful to see to it that he was well primed and stocked with knowledge on those topics in regard to which there was likely to be a searching cross-examination,—such as racing and shooting, seeing that Ramendra Narayan Roy was particularly interested in those particular pursuits. There is much to be said, in my opinion, for Mr Chatterjee's argument that the very ignorance and crass stupidity displayed by the plaintiff at the trial gave indication that the plaintiff went into the box, destitute of any spurious knowledge or information derived from antecedent cramming. To my mind, there is no doubt that the image of Ramendra Narayan Roy created or sought to be resurrected by the defendants' witnesses, and as indicated in Mr Chaudhuri's much discussed question to S Ghosal (*Vol 4, p 3*), was altogether exaggerated and embellished. Upon a careful consideration of the evidence, I am quite clear in my own mind that the plaintiff in the box displayed no greater ignorance and presented no more ridiculous figure than one would expect Ramendra Narayan Roy to have done after years of wandering in the wilderness, if one may so put it, shut off from all ordinary contacts and social intercourse and amenities.

(2) EVENTS AT JAIDEBPUR

Looking now at the period of May, 1909 to December, 1920, from the other point of view, it seems clear that in Jaidebpur the death of Ramendra Narayan Roy was an accepted fact. His *sraddh* was duly performed. The *asthi* was sent to the Ganges. Bibhabati Devi behaved exactly as a Hindu widow would. There was no suggestion made at any time in the course of the proceedings that she knew or had anything to do with the conspiracy which, it was alleged, led to the poisoning which nearly put an end to the life of her husband.

RUMOURS

The learned judge has found that there was a rumour that Ramendra Narayan Roy was living, and that this rumour did not begin in the year 1917, as the defendants say, but was current from 1909. As the judge says, hundreds of witnesses heard it, but whatever it was, it led to no action being taken until Satyabhlama Devi wrote her letter to the Maharajadhiraj of Burdwan in

September, 1917 According to Jyotirmoyee Devi, this letter was the outcome of the visit to Jaidebpur of a *mouni sannyasi* who had come there a short time before this letter was sent, and had written down something which raised a hope that Ramendra Narayan Roy was alive, and although this incident had not started the rumour, it had given it added strength The suggestion was that the rumour had really started with the appearance of a certain sannyasi in the Madhab Bari at Jaidebpur, who had made a statement indicating that Ramendra Narayan Roy was not dead The learned judge seemed to think that the whole episode of the *mouni sannyasi* in 1917 could not have occurred, unless there had been in existence some sort of rumour previously The learned judge came to the definite finding that there was in Bhowal a widespread rumour that the second Kumar was living, and that the question of his cremation did not arise only after the appearance of the plaintiff Whatever the rumour was and however it originally arose, it seems clear that it died down after the correspondence between Satyabhama Devi and the Maharaja of Burdwan As the learned judge says, nobody believed in the rumour There was no conduct that it produced, and when Jyotirmoyee Devi said that she believed it, she was confusing belief with hope "such as one has of the next world, or such as one has of a dear one lost in a shipwreck" Jyotirmoyee did make casual enquiries, and Kripamoyee Devi enquired of sannyasis, but there was no real belief The importance of all this is the bearing it may have had on the mind of Jyotirmoyee Devi when the plaintiff appeared in Dacca

DEFENCE THEORY OF "UTTER DISSIMILARITY"

The defendants appellants made the definite case at the trial that the plaintiff was totally dissimilar from Ramendra Narayan Roy and that there was no kind of resemblance whatever This attitude was somewhat modified in the argument before us, at any rate, to the extent that it was conceded that there was some general similarity as regards the colour of the hair and the light complexion The defendants made the definite case that the putting forward of the plaintiff as being Ramendra Narayan Roy was in pursuance of a conspiracy on the part of Jyotirmoyee Devi and other persons associated with her The learned judge plainly stated the question he had to consider on the issue of identity when he said "The point is whether the sister (Jyotirmoyee) or her children or the children of the other sister (Indumoyee) did, in fact, recognise the plaintiff that day (4th May, 1921), although he said he was the Kumar, or whether he a Punjabee was induced to say that, with knowledge that he was a different man, with the mad hope that he, looking different, as the defendants would have it, or looking similar, if I make a case for them to reduce the absurdity, will pass as the second Kumar, or whether wish was so much father to the thought that the lady without recognition hugged the idea and deceived herself The defendants' theory—total dissimilarity—leaves nothing except the theory of a conspiracy—suddenly conceived, or conceived in the course of three days, while the man was sitting in the yard, a sannyasi bearded, and ash-besmeared, and with his flowing *jata*—to adopt him, a mad conspiracy to pass him off as the Kumar, a singularly looking individual so difficult to personate, although the plaintiff did not know Bengali, and not a detail of so difficult a roll" "That I consider impossible", says the learned judge It seems to me that in that sentence the learned judge crystallised the whole difficulty which confronted the defendants on the question of identity

DEFINITE CASE OF A SUDDEN CONSPIRACY.

In the argument before us the learned counsel for the defendants certainly made the clear and definite case that the claim of the plaintiff to be Ramendra Narayan Roy was the outcome of a conspiracy, a conspiracy which, as far as one can see,—there is not a scintilla of evidence to indicate anything else,—must have been conceived and put into execution within the space of a few days at the uttermost, and when I pointed this out to Mr Chaudhuri and suggested that the time factor was wholly against him, he was obviously embarrassed and indeed non-plussed, and quite unable to advance any theory, let alone facts, which would overcome this enormous obstacle

“INCOMPREHENSIBLE” AND “IMPROBABLE”

It has been pointed out in the early part of this judgment that in this case the plaintiff did not in the first instance come forward of his own motion to claim the personality and property of Ramendra Narayan Roy, and it was only after much pressing that he declared that he was Ramendra Narayan Roy. According to the defendants' case, a stranger sannyasi who happened to be on the Buckland Bund at Dacca had been taken from one place to another as a man of medicine,—to Kasimpur, to the house of Saibahini, to Jaidebpur, not suspected by anybody as being Ramendra Narayan Roy, then staying in Jyotirmoyee's house, until on the 4th May this sannyasi, a Punjabee, according to the defendants, talking an unintelligible *patois*, not looking in the least like Ramendra Narayan Roy, suddenly declared or was made to declare that he was Ramendra Narayan Roy, without having any knowledge or the slightest idea what manner of man Ramendra Narayan Roy was or was supposed to be, or what were his physical characteristics or his stature, whether he was young or old, single or married, and in fact without knowing anything whatever about the man he was intending to impersonate. It certainly seems incredible that any man, however much he might desire to step into the shoes of another, would undertake, or allow himself to be persuaded into undertaking, such a gigantic task.

Upon the supposition that the whole thing was contrived and operated by Jyotirmoyee Devi,—as the defendants would have the court believe,—the matter becomes still more incomprehensible and improbable. Jyotirmoyee Devi was an orthodox *pardanashin* Hindu widow, and I think the learned judge was right in saying that “No small emotion would cause her to expose herself to public gaze.” Yet when the plaintiff fainted in her compound, she unhesitatingly went out to him. The plaintiff was admitted to the intimacy of the family circle immediately, and I think one is bound to take the view that Jyotirmoyee Devi must honestly have believed that the plaintiff was her brother, and that of course demolishes the defendants' theory of a conspiracy. The learned counsel for the plaintiff—respondent contended that honest recognition by Jyotirmoyee Devi would, of itself, be sufficient to carry the plaintiff to a successful issue of his case. Honest recognition, however, though it to a large extent disposes of the defendants' theory of utter lack of similarity as between the plaintiff and Ramendra Narayan Roy, is not conclusive, and the learned judge was, therefore, right in saying that a single point of difference, like death itself or a different mind or proof that the plaintiff was not a Bengalee, would displace him entirely. This brings one to a consideration of the issue of “identity.”

PART II

IDENTITY CHAPTER

One of the first matters under this head discussed by the learned judge was the question of the photographs put in evidence, considered in the light of the evidence of the expert witnesses, two artists and two photographers, one of each on either side, namely, J P Ganguli and Winterton for the plaintiff and Percy Brown and Musslewhite for the defendants

PHOTOGRAPHS

We have considered all the arguments which were put forward on behalf of the appellants and respondent, respectively, and we minutely examined the photographs for ourselves, and the conclusion we came to was that having regard to the difference in the age of the individuals in the photographs, and alterations or distortions caused by touching up or variation in lighting, angle of vision and so on, it was quite impossible to form any definite opinion as to whether the photographs were all of one and the same man or not, and it is not possible to hold, as the learned counsel for the plaintiff invited us to do, that in the photographs there appear the same type and shape of ears throughout. In other words, the photographs are of little or no value one way or the other. In my opinion, it can, however, be stated with confidence that there is nothing in the photographs which indicates that the plaintiff cannot be Ramendra Narayan Roy.

RIGHT VIEW TAKEN BY TRIAL JUDGE

I think the learned judge made a sapient observation when, commenting on the photographs, he said, those who knew the Kumar would recognise him in a series of photographs taken at different periods of life during their acquaintance, whereas a stranger would not, and this leads to the proposition that the best proof of identity is recognition, and the next best thing is inference of identity from external evidence without actual recognition,—as, for example, when a dead man is identified from a ring found on the finger or article found in his pockets. The learned judge pointed out that those persons who knew Ramendra Narayan Roy might see in the photographs the same man, because intrinsic in them all are certain points which create for such persons, and not for strangers, a sense of familiarity. If one sees a particular individual not once only, but on several occasions, one retains a generalised recollection of the image, and so may be able to recognise, despite changes produced by increased age, disease or accident. The learned judge, therefore, took the view, and I have no doubt quite rightly, that the efforts of the learned counsel for the defendants to shake recognition by showing that the witnesses who spoke to it could not analyse or give description in detail were without substance.

DIRECT EVIDENCE OF IDENTITY TENANT WITNESSES

Coming now to a consideration of the direct evidence of identity, the first thing that strikes one is that it was quite right and reasonable for the learned judge to have discarded practically *in toto* the evidence of the numerous "tenant

witnesses'' On behalf of the plaintiff there were examined nearly five hundred of such witnesses, and on the defendants' side well over two hundred. Those who gave evidence for the plaintiff declared that they recognised him as the second Kumar, not at a glance, but after looking at him for a short time. On the other hand, those who testified for the defendants were, on the whole, disposed to say, and indeed did say, that they found the plaintiff utterly and entirely different, and not Ramendra Narayan Roy at all. In estimating the value of the evidence of the two opposing sets of witnesses, one has to bear in mind the letter (hereinbefore mentioned) written by Jogendranath Banerjee on 31st May, 1933, to one of the naibs, wherein the writer stated — "I am sending a specimen herewith of the statement, but see that the language is not the same." This letter was admitted by Jogendranath Banerjee (*Vol 15, pp 468, 484 and 485*). There was also the other letter written by an Inspector of the Estate to the various naibs directing them to "take steps according to previous instructions to see that no tenant of the estate or any other witness deposes for him" (*i.e.*, the plaintiff). I have mentioned these two documents as illustrating the pressure and intimidation exercised upon the tenants of the estate by the defendants' agents, and it is obvious that, in the circumstances, the evidence of tenants ultimately adduced in the trial by the defendants could not possibly be of any value whatever, and the learned judge quite justifiably held that the denial by the defendants' batch of such witnesses, coming to repeat Jogendranath Banerjee's "sample evidence", without even the variation which he had recommended (as the learned judge satirically adds), goes for nothing, except for things extracted from them in cross-examination. Quite obviously, the evidence of this class of witnesses might not unfairly be described as machine-made and common form. On the other hand, however, many of the tenant witnesses who supported the plaintiff may have had only a very imperfect knowledge of the appearance of Ramendra Narayan Roy, and in any case, may have been and probably were considerably influenced by sentiment or actuated by feelings of loyalty to their landlord's family. As the learned judge remarked, therefore, in the circumstances of this case, it would be impossible to rest one's conclusions upon their testimony, unless the identity otherwise appears, so long as that testimony is explicable by a sense of loyalty to the old house and by a measure of resemblance sufficient to deceive.

DEFENCE INSISTENCE ON TOTAL DISSIMILARITY

During the hearing of the appeal one of the most outstanding of all the remarkable features in the case was the defendants' original insistence, and indeed vehement insistence, at the trial on utter difference or total dissimilarity as between the plaintiff and Ramendra Narayan Roy. It was the theme of practically every one of the witnesses examined on commission by the defendants before the commencement of the trial itself, and the same theory was persisted in on cross-examination of the plaintiff's witnesses even down to the time when Jyotirmoyee Devi, who was the six hundred and sixtieth witness, went into the box. I have already pointed out how this theory of no resemblance militated against, if not indeed demolished, the idea of a conspiracy on the part of Jyotirmoyee Devi. It seems that the learned counsel for the defendants did at the trial eventually somewhat modify the extreme position contended for in the earlier stages of the trial, and in answer to the learned judge, did concede that the plaintiff and Ramendra Narayan Roy are not so utterly different that any body saying that they are the same necessarily gave false evidence, and after the opening of the defendants' case,

the evidence called for the defence seems to have confined the difference to the face only, it being conceded that there was a similar colour in the hair. Before us, in the appeal, counsel for the defendants appellants seemed disposed to move still further away from the original standpoint, and to concede some similarity, at any rate, as regards complexion. One suspects that the defendants appellants had come to realise dimly, if not clearly, the dilemma which seemed likely to embarrass, if not to defeat, them entirely.

DEFENDANTS' DILEMMA

Total dissimilarity rendered the theory of conspiracy to sponsor an impostor practically untenable. Resemblance, to however slight a degree, would bring in the question of coincidence and the likelihood or otherwise of the fortuitous appearance in Dacca of an "alter ego" of the supposedly dead Ramendra Narayan Roy, and at the same time reinforce the evidence on the plaintiff's side touching recognition.

ISSUE CORRECTLY STATED BY TRIAL JUDGE

The learned judge accurately envisaged the problem, and quite adequately epitomised the position as ultimately presented before him, in the passage in his judgment where he says "I do not agree that the court has to decide between two alternatives, 'total dissimilarity' and 'identity', and in examining the direct evidence, I cannot suppose that either the witnesses are lying or the plaintiff is the same man, though the defendants might be committed to this sort of thing." "Every thing in the evidence, the undisputed facts connected with the declaration of identity summed up in Needham's Report, the facts I mentioned in that connection as showing the honest belief of the sister, the facts that followed, the *mukhagni* and *siadh* of the grandmother (Satyabhama Devi), the decent people who joined them, the payment of *nazar* and rent, the opinion expressed by conduct of people of the highest position who knew the Kumar, the 967 witnesses who have sworn to his identity, the evidence of J N Gupta (Vol 13, p 29) that there was a general resemblance between the two, the evidence of Rankin (Vol 12, p 84 and p 98) that if any body says that the plaintiff resembles the second Kumar, he might be speaking the truth, the evidence of K C De (Vol 13, p 114) that he who denied the identity might be mistaken, the manner in which the second Ranu's (Bibhabati's) own cousin Sukumari (Vol 15, p 269) denies the identity in cross-examination, all this and many other things in the evidence indicated the problem for me. "At first sight he seems to be the man." The court will have to decide whether it is identity or stops short of it, whether the witnesses, belonging to all ranks and conditions of life and of whom there would be no end, except for the limit imposed by consent, have been misled by a resemblance, or whether they came, because he is the same man."

As a statement of the issue to be determined, the proposition embodied in the last part of the passage I have quoted seems to me to be unquestionably correct.

SOUND APPRAISEMENT OF EVIDENCE

The learned judge then proceeded to examine the evidence given on each side. Having deducted from the total of 967 witnesses, who testified

that the plaintiff is the same man as Ramendra Narayan Roy, the 473 ordinary tenants, already referred to, he divided the remainder into various classes, and then examined their evidence in considerable detail. The learned judge was satisfied that the principal witness Jyotirmoyee Devi told what she believed to be the truth. I am quite unable to agree with the argument of the learned counsel for the defendants appellants that this lady had a motive, or at any rate, a sufficient motive, for originating or taking part in a conspiracy to propound an impostor. No doubt, as the learned judge appreciated, "a brother would suit her very well", but she was not in such financial circumstances as would suggest an adequate incentive to a colossal and abominable fraud. I am disposed to agree with the learned judge that the thing is inconceivable. There is in my view sound common sense, if I may say so, in the learned judge's appraisal of the situation.

INCREDIBLE SUGGESTION OF CONSPIRACY BY JYOTIRMOYEE DEVI

It seems incredible that even if Jyotirmoyee Devi conceived the idea of passing off a Punjabee as her brother, despite the fact that that brother's widow was alive, despite the resources of the Bhowal estate, despite the head of the family Satyabhama Devi, despite her own notions of caste and honour, as the learned judge puts it, despite the uncertainty and remoteness of success, she could ever have imagined that she would secure the co-operation and support of such a huge array of witnesses, or that a large number of persons of integrity and standing in the district could be procured to support such a nefarious and risky scheme. The learned judge was, however, not content with a mere finding that the lady was honest in her testimony, he proceeded to ascertain whether what she said, was in fact true. The learned judge came to a similar finding as regards Sarajubala Devi, widow of Ranendra Narayan Roy, Pura Sundari Devi (cousin of Bibhabati), and Sarojini Devi (aunt of Bibhabati). As regards this witness, the learned judge said "This lady told the truth when she said that she had recognised the plaintiff as the second Kumar of Bhowal"

HONESTY OF HER EVIDENCE

It was urged on behalf of the defendants appellants that examination of the record of the evidence given by Jyotirmoyee Devi shows that she was not frank and truthful, particularly as regards the account of the visit of the Madhab Bari sannyasi, the *moum* sannyasi, and the quest of Akshoy Roy (as Mr Chaudhuri called it), and that her evidence as to the events immediately preceding the declaration of identity on the 4th May indicates that it was only after three separate interviews, followed by the plaintiff staying in her house for some three days, that she was able to convince herself that the plaintiff was her brother. Upon a careful consideration of this part of Jyotirmoyee Devi's evidence, I am unable to feel satisfied that in all the circumstances—the plaintiff's long absence, the change of appearance due to beard and long hair and so forth—(her conduct was such) as to justify a conclusion that Jyotirmoyee Devi's evidence was not honest evidence.

REACTION TO AN UNPRECEDENTED SITUATION

The situation was peculiar and indeed unique, and so it may well be that Jyotirmoyee Devi's reactions to it and her behaviour were not altogether

such as one would normally expect in a sister recognising and welcoming a long lost brother. Considerations of the kind adumbrated in an earlier part of this judgment came into play, and the actions of relatives, finding themselves in the presence of a man who was thought to be long since dead and burnt to ashes, might quite easily not be in conformity with the normal actions and behaviour of relations faced with a man whose death was not so seemingly well authenticated. It does not surprise me, or raise any misgivings in my mind as to the honesty of Jyotirmoyee Devi's testimony, that in the peculiar and indeed unprecedented situation in which she found herself, Jyotirmoyee Devi should have felt it incumbent upon her to satisfy herself beyond all doubt as to the identity of the sannyasi and to make assurance doubly sure.

One aspect of the matter which to my mind weighs heavily in favour of the truth of Jyotirmoyee Devi's evidence is this: that if the plaintiff was merely an impostor dishonestly put forward, he did not, be it remembered, in the early stages push himself forward,—it would have been just as easy to give one false tale as another, and if Jyotirmoyee Devi were indeed a conspirator, she or those associated with her might have invented a superficially more plausible and credible story of the events in the early days of May. As far as one can see, there is no reason why, if Jyotirmoyee Devi was dishonest, she should not have told a specious tale of instant and unhesitating recognition. In my view, the divergence from what one would expect as the normal tells rather in favour of than against the honesty of the witness.

EVIDENCE OF SARAJUBALA DEVI

There was much more substance in the criticism directed against Sarajubala Devi. No doubt this lady "wobbled", if one may use the expression, in her opinion of the plaintiff. She did not come into contact with the plaintiff before 1924, but when she had—or at any rate, by the month of January, 1925,—she was supporting the plaintiff's cause, as appears from a letter written by Drummond, the Collector of Dacca, about that time. Yet very shortly afterwards, when writing to the Board of Revenue, she characterised the plaintiff as an impostor. There seems to be no doubt that Sarajubala Devi was quite capable of blowing hot and cold as it suited her purpose at the moment, but on the other hand, her account of the meeting between herself and the plaintiff is reasonably convincing, I think.

PURASUNDARI DEVI

The evidence given by Pura Sundari Devi was criticised on the ground that apparently the first interview between her and the plaintiff took place long after the suit had been started, and it was suggested that it was strange that during all these years the plaintiff should have made no effort to see either this lady or Sarojini Devi. It was suggested that this failure on the part of the plaintiff to get into touch with these ladies sooner, they being relatives of Bibhabati, casts suspicion on the genuineness of their evidence. I see no substance in the argument. It might equally well be surmised that the plaintiff abstained from approaching these ladies sooner by reason of their relationship with Bibhabati Devi.

SAROJINI DEVI

With regard to Sarojini Devi, her evidence was attacked because of her attempt to show that there was a telegram sent by Satyendranath Banerjee (one of the messages mentioned in Satyendranath Banerjee's diary no doubt), which stated that death had occurred at dusk. It may well be that this part of the lady's evidence was not true, and that she was improperly endeavouring to add support to the plaintiff's case, but I cannot take this as sufficient reason for rejecting *in toto* her account of her interview with the plaintiff in October, 1934.

EVIDENCE OF OTHER RELATIONS

In addition to the four ladies just mentioned, there are 14 other close relations of Ramendra Narayan Roy who swore to the identity of the plaintiff, and in addition, a certain number of more distant relatives. It seems hard to believe that all these persons could either have deceived themselves into an honest supposed recognition of the plaintiff, or have deliberately brought themselves to give false evidence on his behalf. It is not sufficient, in my opinion, merely to brush their evidence aside, as it were, and stigmatise them either as fools or liars. The immediate circle of Jyotirmoyee Devi might conceivably have been beguiled or persuaded by her into supporting a nefarious scheme, whereby, directly or indirectly, Jyotirmoyee Devi might reap some advantage to herself, which she would be prepared to share with her confederates, but it is difficult to imagine what motive or inducement could so operate in the minds of the less intimate and more distant members of the family as to bring them to the witness box to lend support to a trumped-up case.

REMARKABLE FEATURE OF THE CASE

The truly remarkable feature of this part of the case is that not a single relation or connection of the Bhowal family came to give evidence against the plaintiff, except the thoroughly discredited and rather despicable Phanindra Banerjee, whose evidence the learned counsel for the defendants appellants could not ask us to accept, and Phanindra Banerjee's sister Saibalini Devi, and a son-in-law of the latter, who was an employee of the Bhowal estate, and what perhaps is even more deserving of comment, none of Bibhabati Devi's own people at Uttarpura came into the witness box to repudiate the plaintiff, except Sukumari Devi, also called Alta Devi (a daughter of Ramnarayan Mukherjee, the maternal uncle of Bibhabati), who only saw Ramendra Narayan Roy a few times before she was 15 years old, and then only by looking across from her bed-room window to a window at which Ramendra Narayan Roy was standing. In any case, it is clear from her answers in cross-examination that she was by no means certain in her mind as to whether the plaintiff was or was not the man she had seen at a window so many years before.

The mother of Sukumari Devi, that is to say, the widow of Ramnarayan Mukherjee, was living at the time of the trial, and she knew Ramendra Narayan Roy quite well, yet neither she nor any other member of the Uttarpura family was called by the defendants.

The learned judge discusses the evidence of some of the other relatives, and lays a great stress on that of Kamal Kamini Devi, a daughter of Swarnamoyee Devi (Ramendra Narayan Roy's great aunt), and so an aunt of Phanindra Banerjee. Kamal Kamini Devi was a member of the Bhowal Raj family at the time when Ramendra Narayan Roy was born, and had known him all his life. She swore to the identity of the plaintiff, and the learned judge says no reason for not believing her.

ANOTHER IMPORTANT WITNESS N K NAG

The learned judge then dealt with the evidence of witnesses who undoubtedly knew Ramendra Narayan Roy, and although not related to him, were not likely to make a mistake, and the learned judge picks out a number of them for special mention. Among them is the barrister N K Nag, who gave an account of his first meeting with the plaintiff. The importance of the evidence of this witness is that he went to make a call on the plaintiff for the express purpose of endeavouring to verify whether he was Ramendra Narayan Roy or not. Nag went in January, 1925, to the house in Harish Mukherji's Road, Calcutta, where the plaintiff was then living, in a sceptical, if not inimical, frame of mind. It seems that if anything he was prejudiced against the plaintiff, and it was only after the plaintiff had recalled in some detail an incident out of the dim past, of a kind likely to be known only to a very small number of persons, that he was able to convince himself of the plaintiff's identity. It seems that the learned judge was quite right in regarding Nag's evidence as of great importance.

DEFENCE CRITICISM OF HIS EVIDENCE

The learned counsel for the defendants appellants tried to make light of this evidence by suggesting that somehow or other the plaintiff might have got wind of Nag's projected visit, and have been primed with Ramendra Narayan Roy's old pet name for Nag, "Naga", and the details of the "midnight raid" which the plaintiff recounted. I find myself at a loss to understand, in the first place, how any outsider could ever have known the details of that particular story, or even if some one had contemporaneously known about it, it would have come back to mind at the crucial moment for the plaintiff to make use of it as a criterion of identity in a so timely and convincing way. I think it is in the highest degree improbable that the plaintiff could have been prepared and coached against the incursion of the doubting Nag. It was argued before us that Nag ought to be regarded as an unreliable witness, because he palpably exaggerated when he described Ramendra Narayan Roy as being as fair in complexion as a Norwegian. An exaggeration of the kind, assuming it to be one, does not, in my opinion, detract from the cogency of his evidence concerning his interview with the plaintiff. It is to be noted that it was on the strength of Nag's vouching for the identity of the plaintiff as Ramendra Narayan Roy that the plaintiff was invited to the party at Galstaun Park, and so appears in the group photograph (*Ex XLII*) in company with many distinguished persons.

Another personal friend of Ramendra Narayan Roy whom the learned judge specially mentions among the many witnesses to identity is Rajendra Kumar Chaudhuri—who at the time of giving evidence was a man of con-

siderable position in Dacca. The learned judge was impressed with his evidence as to identity, as it involved the disclosure in public of youthful indiscretions committed by himself in company with Ramendra Narayan Roy. I think the learned judge was quite right in assuming that the evidence was honest evidence.

DEFENCE EVIDENCE TO DISPROVE IDENTITY

It is not necessary to discuss in any further detail the various classes of witnesses who testified to the identity of the plaintiff as Ramendra Narayan Roy. What of the witnesses for the defendants? The learned judge has set out all these, and has, I think, fully considered the testimony given by each of them. In addition to the employees of the estate, there were some 53 witnesses in all. Fifteen of them were examined on commission, and forty in court. Undoubtedly the big battalions are on the side of the plaintiff, and if a matter of this kind could be adjudicated upon on the basis of the counting of heads, the plaintiff would, in that way alone, be at a tremendous advantage as against the defendants. But that of course is not the right way of dealing with the matter, and one has to consider the quality as well as the quantity of the evidence and carefully to ponder over the testimony of each individual witness. I have fully considered the evidence of the defendants' witnesses on the question of identity, and as the result, I am not prepared to take a view different from that of the learned judge, being without an opportunity and the advantage of seeing the witnesses themselves.

STRIKING PAUCITY OF INDEPENDENT WITNESSES

It certainly is a very remarkable and significant circumstance that not only is there practically not a relation of Ramendra Narayan Roy on the side of the defendants, but as the learned judge says, leaving aside the gentlemen who knew, but have forgotten Ramendra Narayan Roy, there is not a single independent and unbiassed man who would swear that the plaintiff is not Ramendra Narayan Roy. The learned counsel for the defendants appellants sought to account for this state of affairs by pointing to the propaganda, press campaigns and the effect of mass suggestion, and even intimidation, as the explanation for the comparative paucity of the witnesses on the side of the defendants. It may well be that the defendants have been unfortunate enough to suffer some disadvantage from this kind of thing and the lapse of time, which enabled an agitation and canvassing on behalf of the plaintiff to create an atmosphere and to win adherents. There is no means of telling to what extent this does account for the comparatively small numbers of the defendants' witnesses and the weakness of their evidence generally, and one can only adjudicate in the appeal on such evidence as appears on the record. The learned judge was, I find, careful to sound a note of warning to himself, concerning the possible effect on the minds of those who came to give evidence of the intensive propaganda which had undoubtedly taken place on behalf of the plaintiff. After referring to the pamphlets, tracts, poems, and so forth which had been published in the months following May, 1921, the learned judge said: "This propaganda will have to be borne in mind in estimating the direct evidence on the question of identity."

REPUDIATION BY BIBHABATI DEVI

In my opinion, the learned judge fully and carefully considered all the relevant evidence on both sides, and has given due weight to the testimony

of Bibhabati Devi herself, and to that of her brother Satyendranath Banerjee and of her brother-in-law's widow Ananda Kumari. The learned counsel for the defendants appellants in arguing before us made a great point of the fact that Bibhabati Devi had repudiated the plaintiff and had emphatically declined to recognise him as her husband. Mr Chaudhuri contended that it was unthinkable that an orthodox Brahmin lady would falsely deny her husband, and suggested in effect that widowhood was such an unenviable and almost shameful state that no Hindu woman would wish to remain in it, if there was a possibility of terminating it by acknowledging her lawful husband, however undesirable and even repulsive a man he might happen to be. Mr Chaudhuri even went so far as to contend that any sort of husband, however vile, would be regarded as better than none at all.

ITS TRUE SIGNIFICANCE

It may be that to a certain extent there is some substance in that kind of argument, and that in some circumstances one might reasonably take the view that nothing but the strongest inducement would lead a Hindu woman voluntarily to remain in a state of widowhood unnecessarily. One has to ask oneself whether the circumstances of the present case were not such that the ordinary canons and obligations of a Hindu marital relationship might not have lost their force. Ramendra Narayan Roy was admittedly a man who in the days before Darjeeling paid little or no attention to his wife, but spent his time with low companions and loose women. He was suffering from a foul disease and was in every way a thoroughly undesirable and unpleasant young man.

NOT NECESSARILY DISHONEST

Before the plaintiff's appearance in Dacca in 1921, Bibhabati Devi had been living for many years in affluence and great comfort. She had made a life of her own with her brother and his family, and had long been accustomed to the routine and quietude of widowhood. Moreover, it is part of the plaintiff's case that Bibhabati Devi was not only devoted to her brother Satyendranath Banerjee, but was entirely subject to his influence and guidance. Here was a combination of circumstances which one can easily understand might have led her knowingly to refuse to recognise the plaintiff as a long lost husband. It is not necessary, however, in my opinion, to go so far as to attribute Bibhabati Devi's repudiation of the plaintiff to any deliberate dishonesty on her part. When one recalls the circumstances and facts of the kind of married life Bibhabati Devi had had with Ramendra Narayan Roy, and remembers that she was but a young girl at the time of the events in Darjeeling, it is quite possible to take the view that she may very well have been quite sincere in her belief that the man who in 1921 claimed to be Ramendra Narayan Roy was not her husband—possibly being stimulated to that belief by the attitude adopted by Satyendranath Banerjee towards the plaintiff or by subtle suggestion on his part.

CORRECT APPRECIATION OF WHOLE EVIDENCE BY TRIAL JUDGE

Whichever way one looks at the matter, it is manifest to my mind that both as regards Bibhabati Devi and Satyendranath Banerjee, there exists a

motive for a denial of the plaintiff, whereas, as regards many, if not all, of the prominent witnesses on the other side, there was no motive or self-interest to induce them to acknowledge the plaintiff as Ramendra Narayan Roy. I am, therefore, quite unable to hold that in all the circumstances the denial of the plaintiff's identity by Bibhabati Devi is sufficient to outweigh the evidence on the other side. In any event, however, it seems to me that the learned judge has fairly and fully taken into consideration all the relevant materials touching the question of direct identity, and has applied to it correct tests, as appears from the passage where he said "The court will have to look to (a) the quality of the evidence on either side, the credit of the witnesses, their position, education, power of observation, how far they recollect the Kumar, any reasons they have for telling an untruth, any proved falsehood in their evidence altered to support a case, such as the case as to literacy or the dress of the Kumar or as to any particular feature, such as the colour of his eyes or the shape of his nose, (b) any facts incontrovertible in the whole mass of evidence, the rocks in this apparent morass, that prove or displace this identity claimed." By the somewhat picturesque description "rocks in the morass", the learned judge meant the photographs and the marks on the plaintiff's body.

JUDGE'S VIEW ON DIRECT EVIDENCE OF IDENTITY UNASSAILABLE

The learned counsel for the plaintiff argued before us that all the witnesses on the side of the defendants, who said they saw no resemblance between the plaintiff and Ramendra Narayan Roy, must have been wilfully giving false evidence, having regard to the fact that so many witnesses of undoubted integrity had identified the plaintiff. I am not disposed to go so far as to agree with this contention, because it is a matter of common knowledge and experience that one person may find a resemblance between two individuals, where another will not. The onus of establishing his claim, of course, lay on the plaintiff, and it would not be sufficient to hold that the evidence given on the part of the defendants was not strong enough to show conclusively that the plaintiff is not Ramendra Narayan Roy. The plaintiff had to show that in fact he is Ramendra Narayan Roy, and on the whole, I am satisfied that having regard to the volume of evidence on the plaintiff's side, the view taken by the learned judge on this part of the case is unassailable.

COMPARISON OF BODILY FEATURES

After dealing with the direct evidence of identity, the learned judge turned his attention to the consideration of the evidence relating to 'the comparison of the two bodies,' as he termed it, 'one in life and the other in mind' and in proceeding to deal with the comparison of the plaintiff's body with that of Ramendra Narayan Roy, he stated that one can picture and construct the Kumar's body from (a) photographs, (b) recorded details of the body such as might occur in boot-makers' or tailors' books, (c) clothes or shoes made to order, (d) by documents describing him and made before the dispute had arisen, which in the present case is the report of the Insurance doctor made at the time when Ramendra Narayan Roy was insuring his life in the year 1905, (e) any documents describing him after the dispute had arisen, but before the issue came to a head, and (f) the oral evidence of witnesses who knew Ramendra Narayan Roy.

INITIAL DIFFICULTY

It is obvious that in endeavouring to determine whether or not the plaintiff is physically identical with Ramendra Narayan Roy, allowing of course for such changes as one might reasonably ascribe to the lapse of time since the disappearance of Ramendra Narayan Roy, the court below was confronted with the initial difficulty of ascertaining and deciding what exactly Ramendra Narayan Roy looked like, what his features were, his physical peculiar bodily marks and so forth. One has to bear in mind that very few people have sufficiently acute powers of observation or a sufficiently good memory, certainly not such a photographic memory, as will enable them to describe accurately the form and features of their intimate friends, even if they have quite recently been in their company, and still less, if the circumstances are such that time has elapsed since the friends were last seen. Few men could describe in detail the individual physical peculiarities, such as the colour of hair and eyes, or the precise shape of the nose or ears, of a friend or even a close relative long since dead, and certainly not those of a mere acquaintance. Hence the difficulty of reconstructing an accurate image of Ramendra Narayan Roy from the oral testimony given in retrospect by those witnesses who knew Ramendra Narayan Roy, even those who were closely related and knew him well. In one respect, the problem was somewhat simplified, because, as previously indicated, it did ultimately come to be agreed between the parties that Ramendra Narayan Roy was a man with fair hair and a fair complexion, characteristics by no means common among Bengalees, and as we were able to see for ourselves in the course of the appeal, the plaintiff is undoubtedly a man with fair hair and a fair complexion. The witnesses on the plaintiff's side said that the colour of the hair and the complexion were the same. On the other hand, the defendants' witnesses said they were not. As the question of the precise shade of colour of the hair and complexion of Ramendra Narayan Roy depended entirely upon recollection, it is obviously quite impossible to base any conclusion upon the evidence as to sameness or otherwise of the colouring. Jyotirmoyee Devi in her evidence said that her brother Ramendra Narayan Roy's hair was *kata* (brown) as the plaintiff's, his complexion very fair, slight red and yellow tinge, and his eyes *kata* like the plaintiff's. She said that she herself, Ramendra Narayan Roy and the third brother Rabindra Narayan Roy, all had the same sort of complexion which she described as *sahebi*—i.e., of the English variety, and the same sort of hair, brown or brownish, and one of the defendants' witnesses S. P. Ghosh testified to the same effect.

EXAGGERATED CASE MADE BY DEFENCE COUNSEL

It seems that at the trial the case made for the defendants by their learned counsel in his opening was that the plaintiff is fair for a Bengalee, and so was Ramendra Narayan Roy. Ramendra Narayan Roy's complexion was ruddier, his body yellowish and his face sun-burnt. The eyes of both were "not black", Ramendra Narayan Roy's being grey. The hair of both brown, but shades different. Mr Chaudhuri, it appears from the judgment of the court below, stated

"Our case is that the second Kumar was a very much better looking man, sharp features, sharp nose, largish eyes. The combined effect of the setting of the features was that he looked a gentleman. The plaintiff looks a bloated *palwan* (wrestler). He does not look a gentleman nor a Bengalee."

It is very difficult to understand how the learned counsel could have thought, it helped his clients to put his case so high, for, when the plaintiff came before us for inspection, there was nothing in his appearance to warrant any such description. On the contrary, in my opinion there was nothing in his appearance to indicate that he was not a Bengalee, or to suggest in any way that he could not be Ramendra Narayan Roy in middle life.

Even when arguing before us, the learned counsel, while not being quite so emphatic as respects the personal appearance of the plaintiff, still persisted in arguing that the plaintiff was not a Bengalee at all, and that he was nothing but a Punjabee peasant.

SOME ADMITTED COMMON PECULIARITIES

Amidst the mass of conflicting and contradictory evidence on record touching the question of physical resemblance, there stand out certain things which, to my mind, tell heavily in favour of the plaintiff, for their existence is beyond controversy, even if their precise significance is not. It is one of the most significant features of this part of the case that the plaintiff has thick excoriated skin on his ankles—technically known as ichthyosis—and the defendants admitted that Ramendra Narayan Roy and his sister Jyotirmoyee and certain other members of the Bhowal family have the same peculiarity. As regards Jyotirmoyee Devi, there is indeed no question whatever that she has the same sort of skin on her ankles as the plaintiff, as we saw for ourselves when she and the plaintiff came before us in order that we might examine their ankles. It seems not too much to say that judging by appearances, the plaintiff certainly has what seems to be a Bhowal family characteristic, though Dr K. K. Chatterjee was inclined to ascribe the rough skin on the plaintiff's ankles to the effects of self-acquired syphilis. Then, there is the report of the Insurance Doctor in which it is stated that Ramendra Narayan Roy had a scar on the left outer ankle. The plaintiff has such a scar. And further, the affidavit made by Kali Prasanna Vidyasagar on the 6th March, 1910, giving information about certain features of Ramendra Narayan Roy, and stating the colour of his eyes as "brownish." I regard the "scaly" ankles, and the scar on the left outer ankle, as two of the most significant pointers in the whole case. Both of them are very difficult to account for on the mere basis of pure coincidence.

OTHER FEATURES

The learned judge has dealt *seriatim*, in a comparative survey, with the age, height, figure, complexion, colour of moustache, eyebrows, eyelashes and eyes.

On the question of age, all that need be said is that Ramendra Narayan Roy was born on the 28th July, 1884, and so at the trial the learned judge formed the opinion that the plaintiff looked the age Ramendra Narayan Roy would then have reached. In July, 1939, Ramendra Narayan Roy would have been 55 years of age. The plaintiff, when he was before us during the hearing of the appeal, might easily be that age. There was nothing in his appearance to show otherwise. In the matter of height and figure, I agree with the views of the learned judge. As regards complexion, colour of moustache, eyebrows and eyelashes, there seems no reason for holding that

the findings of the learned judge are not justified by the evidence he had before him

COLOUR OF THE EYES

Colour of the eyes This topic, as the learned judge remarked, presents features of great interest, and certainly is of extreme importance. As previously stated, the colour of the plaintiff's eyes is unquestionably brown—light brown, to be exact. The witness Ganguli, the artist, said in his evidence (Vol 7, p 408), that to paint it, he would use burnt umber, but mix it with other colours to make it lighter in depth. The case of the defendants, in its inception at any rate, was that the colour of Ramendra Narayan Roy's eyes was "bluish", and this case was adhered to, though "after the arrival of the report of the Insurance Doctor" (Caddy), as the learned judge puts it, in which the colour of Ramendra Narayan Roy's eyes had been noted down as "grey", the case was modified to this extent that the eyes were grey which is akin to blue, and which ordinary people would call "bluish", and that was how the argument proceeded before us.

"KATA" EYES OF THE KUMAR MEANING OF "KATA"

An examination of all the evidence relating to the colour of Ramendra Narayan Roy's eyes shows that there is universal agreement to the extent at any rate that the eyes were "*kata*", which is a Bengali expression meaning approximately "not dark". A similar expression mainly in use among Mohammedans is "*karanja*". One may take it, generally speaking, that "*kata*" as applied to the colour of eyes really means lighter than ordinary Bengali eyes, and does not of itself definitely define the precise shade, and so would actually include light brown, hazel, grey, or blue, or any compound of these colours giving an intermediate shade. To say, therefore, that Ramendra Narayan Roy's eyes were *kata*, gives no exact indication of their distinct hue. As we saw for ourselves, the plaintiff's eyes are of a light brown shade, and therefore, could properly be described as *kata*, but it does not necessarily follow that they were the same colour as those of Ramendra Narayan Roy, though the appropriateness of the description, as applied both to the plaintiff's eyes and Ramendra Narayan Roy's eyes, does assist the plaintiff to some degree in that if one may so express the matter, it puts the plaintiff and Ramendra Narayan Roy into the same class as regards the colour of their eyes. Or putting it another way, it differentiates, as regards eye colour, both the plaintiff and Ramendra Narayan Roy from the majority of Bengalees.

The learned judge makes the observation that *kata* eyes, though exceptional and though classified together under one name, must have some colour, and this must vary, but nobody in this country, or at all events in Bengal and the Punjab, troubles about or particularly notices the precise colouring, and accordingly nobody refers to *kata* eyes as blue or pale blue or water blue or faded blue or grey or bluish grey or steel grey or hazel or tawny or green hazel or the like, and he adds that a few of such shades exist in this country, or at all events in Bengal, and those that exist and get classed as *kata* are usually not pleasing shades, so that *kata* eyes, like *kata* hair, are somewhat disfavoured in this country. The learned judge rather emphasised the fact that nobody notices the colouring of *kata* eyes, and stated that everybody is usually content with

the perception that they are *kata*, so that none but near relations, and perhaps not even they, would be able to express in words the exact colour of a pair of eyes they knew. In support of this assumption, he refers to the evidence of S P Ghosh, who knew Ramendra Narayan Roy from his own childhood down to the year 1901, and also saw him subsequently, and also knew Jyotirmoyee Debi quite as well. S P Ghosh put the eyes of Ramendra Narayan Roy and his sister into the same category, though, as the learned judge says, the lady's eyes are hazel. Whether these observations of the learned judge are absolutely correct or not, it is, in my view, abundantly clear from the evidence that the word *kata* is in one way exclusive, as it distinguishes from the normal, and in another way, and at the same time, inclusive, as it comprehends a variety of different shades of colour. In a sense it is negative, and not positive. It tells us what the colour was not rather than what it in fact was. The learned judge himself seemed disposed to render *kata* as grey, when the plaintiff himself was giving evidence, though he translated it as "reddish" when another witness was giving evidence (see Vol 6, p 117). As already stated, the plaintiff's eyes are unquestionably brown, a light brown rather than a dark brown.

VIEW OF TRIAL JUDGE RELIANCE ON DOCUMENTARY EVIDENCE

The learned judge has fully examined all the oral evidence relating to the colour of Ramendra Narayan Roy's eyes, and apparently formed the opinion that, to say the least of it, it was in no way conclusive, and in that view I agree with him, and think he adopted the right course in basing his ultimate finding on this point on written testimony of a more or less contemporaneous nature.

DESCRIPTION IN INSURANCE MEDICAL REPORT

In the Insurance Medical Report of Dr Caddy, to which I have already referred, there occurs the statement "eyes grey". The learned judge investigates the question of how it came about that "grey" appears in the description in the Medical Report, and also the not insignificant circumstance that although the defendants knew the contents of this report as early as July, 1921, they did not seek to make out a case of "grey eyes", but of "blue" or at any rate "bluish". Was the explanation of this that there was somebody who was translating *kata* as grey, and the defendants thought, without appreciating the true meaning of *kata*, that it was the equivalent of grey, and might be appropriate to the plaintiff?

DEFENDANTS' FAILURE TO CALL FOR THE REPORT

Incidentally, it may be observed here that it is the view of the learned judge—and it seems to me that he was not unjustified in holding it—that the defendants of set purpose refrained from calling for the medical report, and they thought or possibly hoped that it would remain out of the way in the offices of the Insurance Company, and never emerge again in time to embarrass them by reason of the note it contained concerning the mark on the assured's left ankle. The learned judge surmised that the defendants nevertheless visualised the possibility of this document somehow or other coming before the court, and trusted that they might derive benefit

from the presence of the word "grey" as applied to the eyes, in the event of the plaintiff taking the risk of obtaining production of the report—as he eventually did. The learned judge points out that the report was originally in the custody of the Insurance Company in Scotland. It was obtained from the company by the Board of Revenue in May, 1921, and thus its contents were disclosed to the Court of Wards. It was sent back to the Insurance Company in July, 1921, and there it remained until it was asked for on behalf of the plaintiff in October, 1934, and as appears from a letter written by the Insurance Company, it was sent out to India by air mail, and was produced in court on the 15th December of the same year. Months before this, namely, on the 5th February, 1934, evidence had been given on behalf of the plaintiff by one Girish Chandra Sen, who, as an insurance agent, had been instrumental in getting Ramendra Narayan Roy to take out a life policy in the year 1905, and as such agent had been present on the occasion of the medical examination of Ramendra Narayan Roy by Dr Caddy.

EVIDENCE OF INSURANCE AGENT

The gist of Girish Chandra Sen's evidence was that Dr Caddy in Sen's presence examined Ramendra Narayan Roy's heart and lungs, took his weight and chest measurements, forced inspiration and expiration, examined a sample of his urine, and took his height. Then the doctor sat down and began to fill in the medical portion of the form. Then he put to Ramendra Narayan Roy the questions on the form regarding private history. These questions were put in English. Sen says, "I translated the questions into Bengali, and asked the second Kumar to answer. He answered in Bengali, and I translated the answers into English for the doctor. Then the second Kumar was made to sign under his answers. I do not remember having taken any other man of his complexion, eyes and hair. After the second Kumar signed, the doctor asked me to look for identification marks. I said, white complexion, grey eyes and brown hair were enough identifying marks, as these do not occur in a Bengalee." It appears that the defendants cross-examined the witness with the object of showing that he was not the agent concerned in the insurance at all, and that another man named Bhar was in fact the agent, and that the witness had made a false entry in his books. After the medical report had been produced in court the defendants admitted that Girish Chandra Sen was in fact the agent responsible for the insurance.

DEFENCE EXPLANATION

It was argued before us that the learned judge was wrong in thinking that "grey" was Girish Chandra Sen's word and not Dr Caddy's, and that the doctor did not record his own perception. The argument was to the effect that the learned judge had misread or misinterpreted the evidence given, and that Girish Chandra Sen never said that it was he who had described the eyes as "grey", and not the doctor himself.

The curious thing is that there was no cross-examination specifically directed to this point. It seems to me there is perhaps some ambiguity in what the witness said, which might easily have been cleared up, had the cross-examination on behalf of the defendants been a little more searching in character. The learned judge attaches some significance to the fact that in the medical report what is written is "hair brown,

fair moustache, eyes grey" The words "eyes grey" occur after a full stop, and have faded more than the preceding words, as though, says the learned judge, they were written a little later than the preceding words As just stated, there is, I think, some ambiguity in Sen's evidence on the point under discussion, but the learned judge had the advantage of seeing the witnesses, and has drawn an inference which cannot be said to be incompatible with the evidence as recorded It is, in my opinion, quite possible that as Dr Caddy had seated himself to write down his opinion on the purely medical aspects of the examination, he was content to trust to the observation of the agent for the supplying of the answers to the non-technical questions This furnishes an instance of the advantage which this court might have derived from having an opportunity of putting additional questions to the witness

AFFIDAVIT OF KALI PRASANNA VIDYASAGAR

The other document bearing upon the question of the colour of the eyes is the affidavit of Kali Prasanna Vidyasagar, and the learned judge regarded this as surer ground to proceed upon than the medical report Kali Prasanna had known Ramendra Narayan Roy all his life, and is a person of some standing In this affidavit he says, "hair and eyes brownish", and the learned judge has accepted this description as correct, and accordingly came to the finding that Ramendra Narayan Roy's eyes were light brown, the same as the plaintiff's, and that "blue eyes" is a false trait deliberately ascribed to Ramendra Narayan Roy to distinguish him from the plaintiff Whether or not the learned judge was altogether right in the latter part of this finding, I think it may safely be said that there is no sufficient reason for saying he was not right as regards the actual colour of the eyes.

FEATURES FROM PHOTOGRAPHS

The learned judge then dealt with the question of features from photographs The learned judge has discussed this matter at some length, and it is clear that he very carefully considered all the evidence given and in the result, he has decided in favour of identity on the basis of certain points he found common to all the portraits When one remembers that the photographs of Ramendra Narayan Roy produced in court were copies of originals, and that the plaintiff was no doubt posed, and "made up" in some respects so as to resemble the old portraits of Ramendra Narayan Roy as much as possible, I am bound to say that I should have found great difficulty in coming to a definite conclusion from the photographs, either on the conflicting evidence of the artist experts or the photographic experts or from a personal comparison of the various pictures, so, although I think the photographs are of little or no assistance to the court, I am not prepared to differ from the learned judge, except to the extent of saying that I do not think the photographs of themselves establish identity as regards the ears of Ramendra Narayan Roy and those of the plaintiff

SHAPE OF THE NOSE

A word or two must be said as regards the nose, and as the learned judge says, it is about this feature that the controversy has raged the

fiercest, and in regard to it, the judge says that though in point of broadness the difference is not conclusive on the photographs, there is a difference in shape, and indeed this is not only obvious on a comparison but was admitted. It was, however, argued before us on behalf of the plaintiff that this difference does not prove that the persons are not the same. It was urged that the difference in shape is due to changes which have manifested themselves since 1909. Jyotirmoyee Devi stated in her evidence that to her it seemed that the nose was the same when the plaintiff came in 1921, though other people said, it was fatter, because the man had grown fat.

PRESENCE OF A BONY GROWTH OR NODE

At one time there was a suggestion, indeed an assertion, that the alteration in shape was due to the practice of *kumbhak*, but this explanation was expressly abandoned by the learned counsel for the plaintiff during the argument before us, and we were invited to hold that the real explanation of the change, if there really was one, was that on the right side of the nasal bone there is a bony growth, caused according to Dr Chatterjee by syphilis. Dr Denham White and Dr Thomas did not agree that this was the cause, but as far as one can see, were at a loss to suggest any other cause. I shall say something on the question of syphilis a little later. The learned judge was quite satisfied that on the evidence of the three doctors it was definitely proved that the plaintiff had syphilis, just as Ramendra Narayan Roy had, and that this brought about the bony growth—a node—and other changes in the nose, and thus the difference in the nose was satisfactorily accounted for, and the learned judge was by way of thinking that so long as the presence of syphilis explains the difference in the nose as a thing that occurred after the year 1909, that difference could not outweigh the rest of the evidence of identity, including the mark (i.e., the scar on the ankle), noted on the doctor's report, "of which the defendants were so afraid, and which the plaintiff called for from Scotland, as the defendants did not do so."

CASE ABOUT THE MARKS

The learned judge has tabulated the actual marks found on the body of the plaintiff under 13 heads. When the plaintiff was under cross-examination, it was put to him in connection with the events of the 4th May, 1921, that "the marks on your person were seen, and it was given out that these were on the second Kumar", and the same kind of suggestion was made to Jyotirmoyee Devi. Thus, of course, does not apply to the marks acquired after 1909,—such as, the syphilitic marks,—the vaccination marks or the cyst under the tongue. It was, in fact, the case of the defendants that none of the marks on the plaintiff were on Ramendra Narayan Roy at all, but were noticed on or about the 4th May, 1921, and were then falsely attributed to Ramendra Narayan Roy. In short, the defendants-appellants argued both in the court below and before us that "the sister saw the marks on the plaintiff, and put them on the Kumar". It was nobody's case, and it was never suggested by the defendants, that any of the marks were fabricated or faked in any way whatever.

IRREGULAR SCAR OVER LEFT ANKLE

Of all the marks on the plaintiff, to my mind, the most striking and significant on the question of identity are the irregular scar over

the left ankle and the scaly feet, as it seems quite certain that similar marks were on the body of Ramendra Narayan Roy. The irregular scar over the ankle was shown by the plaintiff in court in the month of December, 1933, and was declared by him to be due to a carriage wheel passing over his leg. According to the evidence of Jyotirmoyee Devi, in 1921 the mark was quite clear, and so well-defined that she could see it from a short distance away. The mark was seen by Dr Denham White, Dr Thomas and Dr Chatterjee in January, 1936, but only with the aid of a magnifying glass. During the course of the appeal the plaintiff pointed out the position of the scar to us, but by that time the scar itself was no longer discernible, and personally speaking, I found it not very easy to distinguish the scar from the rest of the skin of the ankle. None the less it must be taken as beyond dispute, that the plaintiff has, or at any rate, until a few years ago did have a scar in the position mentioned by him. It was agreed that a scar tends to fade, and that in 1905, Ramendra Narayan Roy had no other mark to mention.

DEFENCE DENIAL OF SUCH A MARK ON KUMAR

As already stated, it was, on behalf of the defendants, suggested to the plaintiff in cross-examination that this mark of his was being falsely ascribed to Ramendra Narayan Roy. In addition to this, witnesses, who spoke about the scar, or who gave evidence about the accident in which Ramendra Narayan Roy was said to have received an injury resulting in such a scar, or evidence to the effect that Ramendra Narayan Roy was limping on crutches at the time of his brother Rabindra Nath Roy's marriage in the year 1904, were also cross-examined with the object of establishing that they were giving false evidence. The plaintiff's own evidence on the matter is that some six or seven days before Rabindra's marriage, the wheel of a phaeton went over his left leg, and as a result of the occurrence he was going about on crutches at the wedding. Jyotirmoyee Devi, according to her evidence, actually saw the wound, though she did not see the accident. She too was cross-examined with a view to showing this evidence was false.

Such was the attitude of the defendants in the early stages of the trial before the Insurance Doctor's report made its appearance in court at the instance of the plaintiff on the 15th December, 1934.

CHALLENGE BY PLAINTIFF "HEDGING" BY DEFENDANTS

Previous to this, there was put in, on behalf of the plaintiff, a petition, asking that the court would make a note of the fact that the learned counsel for the defendants, while questioning the accident, would not state whether Ramendra Narayan Roy had the mark on the ankle or not, whatever the cause of it might be. To that petition, the defendants answered in writing that their case had always been that Ramendra Narayan Roy had no carriage accident in which the wheel of the carriage passed over his ankle, and "had not the mark which the plaintiff has shewn on his ankle." The learned judge describes this as "hedging." It seems clear at any rate that either the defendants were not quite frank with the court, or they were not altogether sure of themselves, having regard to the existence in the background of the Insurance report. It is quite true that there is no very definite evidence that the mark on the plaintiff's ankle is in exactly the same spot

as the mark on Ramendra Narayan Roy, or corresponds exactly with it in size and shape, but this is in no way surprising, seeing that the witnesses who testified as to the carriage accident in which Ramendra Narayan Roy sustained an injury were endeavouring to recall and describe a comparatively trivial, and rather common-place, event which had happened years before, and one which could have excited no more than a passing interest, and nobody at the time would have troubled himself as to the resulting scar, its size or shape

SUBSEQUENT PRODUCTION OF INSURANCE DOCTOR'S REPORT

The learned judge has set out a chronological table showing the various events in connection with the Insurance papers. There seems to be no doubt that they were originally procured from the Insurance Company, the Scottish Union and National Insurance Co., by Lethbridge, the then Secretary to the Board of Revenue, at the suggestion of Satyendranath Banerjee, who, almost immediately after the plaintiff's declaration of identity, had hastened to consult the Board of Revenue, and then wrote the letter which was published in the "Englishman" of the 9th May, 1921. Lethbridge was in communication with the Collector at Dacca who represented the Court of Wards there, and it seems only a reasonable inference to make that all concerned with opposition to the plaintiff must have been fully aware of the course of events and the contents of the papers in question.

The learned judge was of opinion that the description of the scar in the Insurance doctor's report fits the mark on the plaintiff's person, as described by the doctors and seen by the learned judge himself, and so he says that there can be no doubt whatever that this mark on the plaintiff was the mark seen by the Insurance doctor on the 2nd April, 1905, when Ramendra Narayan Roy appeared before him, "unless anything displaces the identity of the man", that is to say, the plaintiff. The learned judge says that the defendants had good reason to be afraid of the Insurance report, and this fear is some proof of the identity of the scar.

NO EXPLANATION OF SCAR MENTIONED IN REPORT

Although the witnesses for the defendants sought to do away with the limping on crutches at the wedding, and even the whole story of a carriage accident, no attempt was made to show any other cause for the scar which Ramendra Narayan Roy undoubtedly had on his left ankle. Bibhabati Devi herself admitted the existence of the scar, and said she found this mark on Ramendra Narayan Roy at the time of their marriage, a scar that looked like a cut mark on his leg, left leg, slightly above the left ankle joint on the outer aspect, on the outer side of the leg. As regards the suggested limping at Rabindra Nath Roy's wedding, she went no further than to say, she did not remember it. That Ramendra Narayan Roy did injure his leg, is confirmed by a letter written to Bibhabati Devi on the 19th February, 1904, by her own sister Malina in which the latter said "we are all glad to hear that Ramendra's leg has healed." This letter was written rather less than a month after Rabindra Nath Roy's wedding. In all the circumstances, and having regard to the relevant evidence, it is not surprising that the learned judge came to the finding that the irregular scar on the top of the left outer ankle of the

plaintiff is the scar which the Insurance doctor saw, "if other facts point to the identity, and no other fact displaces it" To put the matter as its very lowest, both Ramendra Narayan Roy and the plaintiff had a scar on the left outer nakle The coincidence is there, and it certainly tells in the plaintiff's favour

"SCALY FEET"—A BHOWAL FAMILY PECULIARITY

I have already discussed the scaly feet, and very little more on this point need be added Dr MacGilchrist saw this condition of the skin on the plaintiff, and said it is called ichthyosis or fish skin, and expressed the opinion that it is hereditary This opinion is of the utter (*sic*) importance in view of the fact that the plaintiff stated that he and Rabindra Nath Roy, Kripamoyee Devi (sister of Rajendra Nath Roy, the father of Ramendra, Ranendra and Rabindra), Budhu (Jalad, Jyotirmoyee Devi's son), Mani (Promodbala, Jyotirmoyee Devi's daughter) as well as Jyotirmoyee Devi, all had this peculiarity It is to be noted that the plaintiff was not challenged on this point in cross-examination Jyotirmoyee Devi said that her father Rajendra, his sister Kripamoyee Devi, Ramendra, Rabindra and she herself, her son and her daughter, all have this condition Jyotirmoyee Devi we saw for ourselves, as already mentioned, and there is no doubt, in my opinion, that her instep and the plaintiff's are very much alike as regards this curious skin condition Dr Ashutosh Das Gupta, the family physician, had said, roughness of the skin in the ankle-joints is a peculiar feature of the members of the Bhowal Raj, with the exception of Bara Kumar (Ranendra) and Indumoyee (the eldest daughter of Rajendra) Dr Denham White observed the condition of the plaintiff's ankle and the dorsum of both his feet, and when asked what it was, said "I think it is a condition of hyperkerotosis", possibly due to a deficient endocrine secretion, such as thyroid He said that both he and Dr Thomas came to this conclusion It is impossible, therefore, not to agree with the finding of the learned judge which he expresses in these words "I find that the second Kumar had this fish skin on his instep and ankle, just as the plaintiff has it, and that the Raja (Rajendra) and the other persons named by Jyotirmoyee Devi including herself had or have it too It is a thing running in the family"

MORE THAN A MERE COINCIDENCE

Is it to be treated merely as a second coincidence that the plaintiff should have the same sort of skin on the ankle as Ramendra Narayan Roy? No doubt it is quite possible for two persons, not of the same blood and unrelated to one another, to have the same sort of condition in this respect, especially having regard to Dr Denham White's opinion as to its origin, but when one finds that there is evidence that this was a peculiarity, characterising various members of the family with which a certain man was claiming close relationship, and even possessed by a man whose son that man claimed to be, I think it is not unreasonable to regard the common existence of the peculiarity as something more than a mere coincidence, and at the very least, as affording considerable support to the claim that is being made Taken in conjunction with the coincidence of the ankle scar, it does, in my opinion, carry the plaintiff a very long way indeed

SYPHILIS

I now pass to the question of syphilis. The learned judge, upon a careful examination of the medical evidence, came to the conclusion that the plaintiff is "an old syphilitic individual", and that on the right side of the bridge of the nose has occurred a bony growth 7/16th of an inch in diameter, —that on the left side of the bridge of the nose there has occurred a slight thickening of the bone,—that there is a slight thickening of the septum and inflammation of the mucus membrane of the nose, and that these and even the admitted bony growth alone, coupled with the fat from which the nose could not be altogether immune, and with the fact that there has been a slight "saddling", explain the difference between the plaintiff's nose and that of Ramendra Narayan Roy, judged by the photographs alone. He points his finding by saying "These and the nose alone are bound to change the appearance of the nose, so that it no more displaces his identity than the fact that he had come to have some grey hair."

As stated in the early part of this judgment, one of the few facts about Ramendra Narayan Roy, about which there could be no dispute, was that at the time of his apparent death in Darjeeling in May, 1909, he was suffering from tertiary syphilis, and it was common ground in the case that Ramendra Narayan Roy had on him gummatous ulcers at that time. It is obvious, therefore, that if it could have been definitely established by the defendants that the plaintiff had not and never did have syphilis, that of itself would have been enough to put him out of court. On the other hand, a finding that the plaintiff is or was syphilitic goes no further than showing that the plaintiff is not excluded from success in his claim on the ground of the absence of this particular disease. As I pointed out to the learned counsel for the plaintiff, in the course of his argument before us, it is one of the many extraordinary features in this case that the plaintiff had to make it part of his case that he had suffered from syphilis, a position no one would willingly adopt unless it was absolutely essential to do so. The plaintiff himself stated in evidence (*Vol 4, p 98*), that he had had syphilis, and no less than four doctors gave evidence regarding their examination of the plaintiff with a view to showing that he had had syphilis.

MEDICAL EXAMINATION OF PLAINTIFF

When the defendants opened their case, they made an application to the court for an order directing the plaintiff to submit to an examination by the defendants' medical man. The plaintiff, be it noted, raised objection to this, but eventually consented on condition that the examination should take place in the presence of the plaintiff's doctor, and an order was made by the court with the consent of the parties that the plaintiff should be examined by a doctor on the side of the plaintiff, and by a doctor on the side of the defendants, and that if they differed in their observations or theories, the plaintiff would be entitled to call his doctor to rebut any evidence given by the defendants' doctor.

As an outcome of this order, the plaintiff was examined by three doctors altogether, all of whom gave evidence in the case. The examination took place on the 14th January, 1936, and it is no doubt a very regrettable and indeed reprehensible circumstance that one of the doctors Dr K K Chatterjee, having arrived at the plaintiff's house half an hour before the time appointed for the examination, should have taken the opportunity of

making a preliminary examination of the plaintiff in the absence of the other doctors. He made a record of his observations in a note written in pencil, and he did not show this to the other doctors. It was not without significance that this note deals solely with indications pointing to syphilis, and contains no reference to any of the other marks which were to come within the scope of the examination. This action on the part of Dr K K Chatterjee provided material for criticism, on the part of the defendants, as to the value of this doctor's evidence, and this was augmented by the fact that the doctor thought fit to adopt the position that when he was engaged to take part in the examination, it was never disclosed to him that he would be required to look for syphilis, though he was a specialist upon the subject. Much was made of the fact that he took with him for the purpose of the examination a number of medical books, including several treatises on syphilis.

VALUE OF DR K K CHATTERJEE'S OPINION AS A SPECIALIST

Reluctant as one is to cast an aspersion upon a member of an honourable profession, I am afraid one can only come to the conclusion that Dr K K Chatterjee was not quite truthful, when he said he had no reason to think he was going to see a person with supposed marks of syphilis upon him, and he certainly was not altogether fair to the other doctors concerned. One must also bear in mind that a specialist is sometimes so obsessed with, or at any rate, has his mind so much on his pet subject,—if one may use the expression,—that he is prone to find signs of the disease he specialises in, where other medical practitioners would not. On the other hand, where there is doubt as to the right diagnosis to be made from objective signs, one would ordinarily attach greater weight to the opinion of a specialist than to that of a general practitioner, not professing to have any great specialised knowledge. I do not think that the defendants sought to put their argument on the matter of syphilis any higher than this: that the marks on the plaintiff's body do not prove conclusively that he had ever had syphilis, though they did argue that, to say the least of it, it was extremely unlikely, if not impossible, having regard to Ramendra Narayan Roy's condition in 1909, that the syphilis would ever have "gradually passed off", as the plaintiff said it had. The plaintiff averred in his evidence that he was cured by God, and not by the sannyasis.

REASONABLE CONCLUSION ON MEDICAL EVIDENCE AS A WHOLE

I do not propose to quote at length the various depositions of the medical witnesses. I have examined all the relevant parts of them, and I have satisfied myself that the learned judge before arriving at his findings fully took into consideration all the evidence in this matter. Despite the criticism, which can justifiably be made of Dr K K Chatterjee's behaviour in connection with the joint examination, I think it was right to give greater weight to his opinion than to that of the other doctors. Dr Chatterjee's evidence was quite positive: that of the others, on the whole, much less so, and the suggested alternative explanations were unconvincing. Accordingly, on a survey of all the medical evidence, it seems to me not unreasonable to hold that there were indications that the plaintiff was syphilitic, but even if this might be going too far, it certainly would be a fair conclusion to come to, that the medical evidence does not satisfactorily establish that there was no syphilis in the plaintiff.

OTHER MARKS

With regard to the other marks on the plaintiff, as set out by the learned judge on pp 228 and 229 of the judgment, I do not think that any great importance should be attached to them. There was oral evidence showing that Ramendra Narayan Roy had all these marks, but I am not sure that much reliance can be placed upon it, and the learned judge himself seems to have been more than a little dubious as to its value, as, in regard to most of them at any rate, he qualifies his acceptance of the evidence by expressions such as "The surest basis of this conclusion will be the identity otherwise proved", "If the identity otherwise appears", and "unless it is displaced by the failure of identity on other grounds."

CONCLUSIONS ON PHYSICAL IDENTITY

The learned judge summed up his conclusions on the matter of the physical identity of the plaintiff with Ramendra Narayan Roy in a series of propositions, which shortly put are as follows

Jyotirmoyee Devi, Sarajubala Devi (Ramendra Narayan Roy's widow), Sarojini Devi (Bibhabati Devi's aunt) and Pura Sundari (Bibhabati Devi's cousin) say that the plaintiff is Ramendra Narayan Roy. All other relations say the same, except Phanindra Banerjee and his sister and her son-in-law. Jyotirmoyee Devi's belief is honest, or the situation that arose on the 4th May could have never arisen. Respectable and independent men,—elderly people having no sort of interest, and men of position and property,—"whom one would not suspect of romance of any kind", and who would draw the line at perjury,—swear that the plaintiff is Ramendra Narayan Roy. This combination of testimony of itself presents a very formidable obstacle in the way of the defendants-appellants, and it becomes all the more so, when one looks at the evidence on the other side and finds that there is not a single independent witness, who knew Ramendra Narayan Roy, and remembers him, who is really certain that the plaintiff is not the man he says he is.

The learned judge then adds to all this the evidence afforded by the identifying marks. He has made a comparative table, demonstrating the identity of personal features and marks, and mentions also one or two other points of similarity. His conclusions from the things set out in his table are that they represent such "a collocation of accidents that can never occur in a second individual". Upon the assumption that the learned judge's table is correct, the conclusion he draws from it is, in my opinion, a reasonable and proper one. Even if one eliminates some of the points of similarity, unless any one of them had been "proved" in the legal sense to be definitely against the plaintiff, as, for example, the colour of the eye, it would still not be unreasonable to hold that such a concomitance must involve a great deal more than mere coincidence. I think, therefore, that the learned judge was fully warranted in saying that the plaintiff must be the second Kumar himself, unless it appears that he had died at Darjeeling, or that he is not a Bengalee.

Darjeeling has been dealt with. There remain the other three matters, any one of which, as the learned judge appreciated, might conceivably operate to destroy the effect of the evidence on physical identity.

"MIND OF THE PLAINTIFF"

In discussing "the mind of the plaintiff", the learned judge observed that if the Kumar was educated, that, without more, would demolish the plaintiff, and nobody would trouble about memory or any thing else. And again, if the second Kumar was educated in any sense, the plaintiff is not the man, and no minute examination of his ignorance of things would be necessary. The learned judge expressed the opinion, based on careful observation of the plaintiff himself, as he showed up in the witness box and upon the evidence he gave, that the plaintiff was absolutely illiterate, and indeed the learned counsel who represented him did not seek to argue otherwise, either in the court below or before us.

DEFENDANTS' EXAGGERATED PICTURE OF THE KUMAR

Much of the difficulty in the way of making a comparison between the mental equipment, or rather the lack of it, of the plaintiff and that of Ramendra Narayan Roy, arose from the fact that the evidence as to the exact standard against which the plaintiff was to be measured, the criterion to be applied, was hard to ascertain. It seems quite obvious that even as regards the interests (*sic*) of the defendants, the standard put forward was very much too high, viewed in the light of the question put by Mr. Chaudhuri in the cross-examination of the witness Ghosal (*Vol 4, p 3*). If that had represented a true picture of Ramendra Narayan Roy, it certainly would have been amazing, as the learned judge points out, that any sane man could have imagined for one moment that the plaintiff—a Punjabee peasant according to the defendants—would ever be able to sustain the part he was undertaking to play. It seems clear that the defendants came to realise this to some extent, at any rate, after some witnesses had given evidence on behalf of the plaintiff as to the kind of person Ramendra Narayan Roy really was, and then a sort of toning down began, with the result that the gulf between Ramendra Narayan Roy and the plaintiff, if there was one, became considerably narrowed. To put the matter another way, the defendants found that it was quite impossible, or at least impracticable, to get their witnesses on the question of Ramendra Narayan Roy's mental and intellectual attainments to maintain the level originally set. The result of all this was that the combined effect of the evidence was that the standard the plaintiff had to conform to, in order to succeed in establishing mental identity with Ramendra Narayan Roy, or, at any rate, to show that the difference was not so great as to oust the other findings on identity, was very much lowered.

"PHANT'S DIARY"

The learned judge has very carefully examined all the evidence relevant to the question of the education, knowledge and pursuits of Ramendra Narayan Roy, for the purpose of ascertaining whether the cross-examination of the plaintiff and the answers he gave in the witness box reveal ignorance of any of the things in regard to which Ramendra Narayan Roy would or ought to have been able to answer correctly, due allowance being made for the lapse of time, absence from contact with the subject matter of the diverse questions, and forgetfulness or loss of memory. I would here repeat that, in my opinion, nothing could be more reprehensible in connection with the

preparation and presentation of a suit at law than the coaching, as it undoubtedly appears to be, of the witness Phanindra Banerjee by means of that "amazing book", as the learned judge calls it, which in the argument before us, was referred to as "Phani's diary" I have no doubt whatever that this witness was put into the box as "a sort of second Kumar's intellectual double", to use the words of the learned judge, and "as a measure of what he (the second Kumar) would be like, if he were living today" If and in so far as the case of the defendants has suffered detriment from this manoeuvre, it is entirely their own fault

TRIAL JUDGE'S CORRECT ESTIMATE

The learned judge has fully considered the matter of Ramendra Narayan Roy's degree of education, his acquaintance with English and English customs and clothes, and his knowledge of the various sports and pursuits, about which the plaintiff was asked in cross-examination, and he comes to the conclusion that Ramendra Narayan Roy, when he left for Darjeeling, was just as illiterate as the plaintiff, and that the whole of the cross-examination of the plaintiff, so far as it went to his general knowledge, was over his head, and so far as it went to sports, it dealt with things which Ramendra Narayan did not know I am bound to say, speaking for myself, that the reading in court of the cross-examination of the plaintiff created in my mind the strong impression that much more might have been done than was, in fact, done to test the *bona fides* of the plaintiff I entirely agree with the learned judge that it should not have been beyond "the combined memories of a thousand people aided by the skill of lawyers and the memory of the wife" to think of something which no amount of tutoring could have prepared the plaintiff to meet The learned judge is quite right, in my opinion, in thinking that it would not have been feasible "that the whole memory of the second Kumar" could be put *en bloc* into this Punjabee peasant In my view, the cross-examination was mainly, if not entirely, directed to matters in regard to which the actual knowledge of Ramendra Narayan Roy was, to say the least of it, extremely dubious, and many of the topics dealt with and the form of the questions were such that even if Ramendra Narayan Roy originally had some knowledge of these topics, he might easily, after the long lapse of time, have found himself in the position of not being able to recall that knowledge or to give correct answers to the questions asked

NO PREVIOUS TUTORING OF PLAINTIFF

In my considered opinion, the learned judge was quite right in the estimate he formed of the kind of man Ramendra Narayan Roy was, and of the amount of knowledge he possessed concerning the various topics which were the subject matter of the cross-examination of the plaintiff The learned judge was, I think, quite justified in saying that the remarkable thing about the cross-examination was that it did not touch, "except incidentally and generally, *apropos* of nothing, the Kumar's memory", except for four things, his syphilis, the tutors who taught him and their success, a few questions about what occurred at Darjeeling and a question about the Bara Dalan, the manager's house in the Rajbari at Jaidebpur It seems to me obvious that there must have been many topics in regard to which the plaintiff might have

been subjected to a raking cross-examination, against which no amount of previous tutoring would have proved an effective shield. To mention only one example, no amount of tutoring would have enabled the plaintiff to identify persons produced before him in court, or even photographs of men or places. I see no indications whatever that the plaintiff had, in fact, been tutored in any way. On the contrary, he displayed an abysmal ignorance of matters in regard to which one might have expected him to have acquired some knowledge as the outcome of his long residence with Jyotirmoyee Devi, his stay in Calcutta and his social and other activities there.

MISHANDLING OF CASE

It cannot be denied that in various respects this case has been mishandled on both sides, and it was no doubt a blunder in tactics as well as being ethically wrong to endeavour to further the plaintiff's case by calling evidence to lend support to the plaintiff's inability or apparent inability to count, but I do not think that the plaintiff's failure to answer the counting questions, put to him, is of any serious consequence. I think it is more than likely that he was being rather stubborn, and in a way aggressive, by way of reaction to the sort of catch questions which from time to time were put to him in cross-examination, and that his refusal to count was not due to ignorance. This seems to be the learned judge's view also.

PLAINTIFF'S CROSS-EXAMINATION A SPECIES OF "LOGOMACHY"

I think the learned judge was quite right in thinking that in judging the cross-examination of the plaintiff and the nature of the questions put to him,—many of them might not unfairly be described as constituting a species of logomachy rather than a searching of mind or memory,—one has to endeavour to consider and appreciate how an illiterate and vacuous mind would be likely to respond to words not known or not familiar to it, or to words taken apart from any context. To put to such a man questions involving puns, or to pass from word to word, from meaning to meaning, would be almost certain to cause him to become confused and unimpressive. With all respect to the learned counsel concerned, and with regret, I find myself in complete agreement with the learned judge's criticisms of the cross-examination, and upon a very careful survey and perpending of the evidence, I am unable to hold that the learned judge's findings regarding the mind of the plaintiff in relation to knowledge of English and English clothes, sports, billiards, polo and racing are not justified on the evidence before him.

JUDGE'S CONCLUSION ACCEPTED

The learned judge, out of the welter of conflicting evidence, constructed a counterpart, as it were, of the mind of Ramendra Narayan Roy, against which he measured the mind of the plaintiff as disclosed by him by his answers in evidence and as illuminated by the plaintiff's demeanour in the witness box. I, therefore, see no reason for disagreeing with the conclusion arrived at by the learned judge that assuming that the second Kumar was illiterate in 1909, and allowing for the lapse from bare literacy that might occur, the mind of the plaintiff, so much of it as the defendants revealed by their cross-examination, is not different from what would be the mind of the second Kumar to-day.

LITERACY · SPURIOUS LETTERS PUT FORWARD BY DEFENDANTS

The learned judge has dealt with the question of Ramendra Narayan Roy's ability to write under a separate heading, which he entitles, the "Literacy of the second Kumar" This is a matter concerning which there was much controversy and discussion in the appeal before us as well as at the trial The defendants contended that Ramendra Narayan Roy, though not in any sense an educated person, could read and write without difficulty, and in support of this, they produced in court on the 19th November, 1932, a series of letters alleged to have been written by Ramendra Narayan Roy to his wife Bibhabati Devi These letters were put to the plaintiff in cross-examination, and he repudiated them It was indeed the contention on the plaintiff's side that all these letters were forgeries, and I have no doubt that the learned judge was right in rejecting them as not being genuine for the reasons which he gives in support of his ruling The attempt on the part of the defendants to substantiate their contention that Ramendra was a fairly facile writer by putting forward these spurious documents was in a way analogous to a false defence of *alibi* in a criminal case, in that failure was bound to react very unfavourably on those who were unsuccessful in persuading the court to accept their contentions

BENGALI AND ENGLISH SIGNATURES OF PLAINTIFF

Apart from these letters, the only Bengali handwriting of Ramendra is one signature The plaintiff in his evidence said, as to his present knowledge, that he could sign his full name, Ramendra Narayan Roy, in Bengali, and could sign his name in English in three ways, namely, Ramendra N Roy, R N Roy and R N R, but when he was asked in cross-examination to pick out the component parts of the signatures, he was unable to do so, or rather made an attempt which was incorrect except in two respects The learned counsel for the plaintiff admitted in the appeal that the plaintiff was incapable of dissecting his signatures The learned judge took the view that the whole signature, whether in Bengali or in English, had become to the plaintiff nothing but a mark, though he thought that when the plaintiff did give the two correct answers, that was indicative of some trace of real memory and not a mere lucky guess

PLAINTIFF'S EVIDENCE OF LITERACY

It is unquestionable that the plaintiff was quite illiterate Though he could manage to make four signatures, he had no idea what the signatures represented, and certainly, he was unable to read anything, even his own name The question, then, arises whether Ramendra Narayan Roy was equally incompetent A number of witnesses gave evidence on the side of the plaintiff to show that after the death of his father, Ramendra gave up all pretence of studying and his tutors found it quite impossible to do anything with him One of the witnesses stated that he tried to teach English to Ramendra Narayan Roy, without his being aware of what was being done, as he was so wayward and had such a temper that he would have resented any serious instruction The learned judge has relied upon certain documents, namely

(1) A letter written by A H Wharton who was appointed after Rajendranath Roy's death to teach the three Kumars colloquial English This letter was

written on the 25th July, 1902, and as the learned judge puts it, it is "full of disgust" Wharton had realised the hopelessness of trying to instal any learning into the minds of the Kumars, and was resigning his post in consequence (2) A report made by H C F Meyer, who was then the Manager of the Bhowal Estate, to the Collector of Dacca This report is dated the 15th June, 1904, and in it Meyer said, "as regards the two younger Kumars, you yourself know it is impossible to do anything with them * * * They have had next to no education" (3) A letter from Kali Prasanna Ghosh dated the 26th April, 1905, written to Ramendra Narayan Roy Kali Prasanna Ghosh was at one time the manager of the estate and had known all the three Kumars from their infancy The only relevant part of this letter, however, was a sort of postscript in an unidentified handwriting, and so was not properly admissible in evidence

HANDWRITING

The importance of these documents was stressed before us in the appeal, and no doubt the letters of Wharton and Meyer were very significant, and there was a good deal of oral evidence on similar lines Having discussed the relevant evidence touching the question of the literacy of Ramendra Narayan Roy, the learned judge stated that the point remained, whether whatever literacy Ramendra Narayan Roy did acquire from the labours of his tutors, could lapse to complete illiteracy, except for the ability to write the signatures without even a knowledge of the letters composing them And so the learned judge passed to a consideration of the handwriting of the plaintiff and that of Ramendra

EXPERT OPINION SOUGHT BY DEFENDANTS BEFORE TRIAL

With regard to this, there is evidence of experts on both sides given after making a comparison of certain admitted signatures of Ramendra Narayan Roy of the year 1909 or earlier, and admitted signatures of the plaintiff of 1926 or after On the 8th February, 1932, that is to say, two years before the trial began and more than five years after the plaintiff had submitted his memorial to the Board of Revenue with nineteen signatures upon it, the Government Pleader of Dacca, Sasanka Coomar Ghosh, acting for the defendants, sought the opinion of one S C Chaudhuri, who had formerly been the Government handwriting expert attached to the Criminal Investigation Department in Calcutta A requisition was sent to the Commissioner of Police, Calcutta, with a request that Mr Chaudhuri's opinion should be obtained The following is the list of the documents submitted for opinion

Group A

Hundis executed by the late Kumar Ramendra Narayan Roy and his brothers

7 Hundis and one hand-note

Group B

(1) Four vakalatnamas with signatures of the Impostor as Ramendra N Roy in Land Registration cases at Dacca in 1929

(2) Three typed petitions containing eight pages in Land Registration Appeals Nos 50 and 51 of 1929-30, filed before the Collector of Dacca, and bearing the signature of the Impostor as Ramendra N Roy

(3) Two petitions in Bengali in Land Registration cases Nos 2718 and 2719 of 1929-30 before the Land Registration Deputy Commissioner and signed by the Impostor as Ramendra N Roy, six pages

To this was added —

N B—Signatures in Group A of Kumar Ramendra Narayan Roy underlined with a red pencil are to be compared with those of the Impostor in Group B also similarly underlined Five signatures from each group which are most dissimilar may be selected for comparison, and opinion with reason may kindly be recorded Prints, enlargements, as well as the negatives, are to be returned along with the expert opinion and the documents

A DISINGENUOUS ATTEMPT

A more disingenuous, and indeed improper, way of obtaining an independent and unbiassed opinion than this would be hard to find The writer of the note above set out made no secret of what he wanted, and the use of the word "Impostor" was quite obviously designed to influence the views of the expert The learned counsel for the defendants admitted that he could not justify this method of submitting the signatures to the expert, and said it was wrong, foolish and indiscreet I regard this as another instance of unfortunate tactics on the part of the defendants It is significant that a note was added to the document, asking that the expert should send his opinion to Mr S C Ghosh at 19, Lansdowne Road (Calcutta) or delivered to Mr S N Banerjee (that is to say, Satyendranath Banerjee) at the same address In this note also it is reiterated that "five signatures from each group which are most dissimilar may be selected"

The remarkable thing was that in spite of the obvious desire to influence the expert against the "Impostor", Chaudhuri wrote a report in which, having set out a string of differences in the signatures in the two groups, he ended by saying in effect that it seemed more probable that the writer of the A series was the writer of the B series, and the differences were caused by infirmity, old age or disease He observed in both lots certain common characteristics, and was of the opinion that an imitator would not have been able to reproduce these common characteristics, and then, as it were, imposed upon them indications of infirmity or old age

LATER APPROACH TO SAME EXPERT BY BOTH SIDES

The letters in Bengali which Ramendra Narayan Roy was said to have written to his wife Bibhabati (which have already been discussed in this judgment) were originally filed in court in a sealed cover They were

photographed by order of the court in December, 1933. The photographs of the letters, together with some admitted signatures of the plaintiff, were submitted to S C Chaudhuri,—incidentally, it was, I think, admitted on behalf of the defendants that the sealing up of these letters was foolish, and sending them to the expert equally so,—on the 4th January, 1934, for his opinion. Before he gave his further report, he, however, received another requisition. On the 9th January, a pleader, acting on behalf of the plaintiff, went to S C Chaudhuri for an opinion on two sets of English signatures, those of Ramendra Narayan Roy and the plaintiff, and on the Bengali handwriting. Chaudhuri declined to give an opinion on the Bengali set, as he had already given one to the other side, but he did give an opinion on the English set to the effect that they were by the same hand.

CALLING OF EXPERT AS WITNESS BY PLAINTIFF

Shortly after this, S C Chaudhuri gave evidence on behalf of the plaintiff. He was cross-examined by one P N Mukherjee, a pleader ordinarily practising at Alipur, and supposed to be an expert in handwriting. He had previously been employed by the defendants to consult S C Chaudhuri, regarding the signatures in dispute, and had had a discussion with Chaudhuri, before the latter submitted his report to the defendants. It was suggested before us that in the circumstances it was highly improper that P N Mukherjee should have been brought in to cross-examine the witness, and I am bound to say that by so acting Mukherjee put himself in a very invidious position. The conduct of S C Chaudhuri too is open to criticism in that he consented to give an opinion to the plaintiff after he had already given one to the defendants, and it detracts very considerably from the value of the evidence he gave in court. It does not, however, affect the value of the opinion he gave to the defendants in the year 1932, as at that time he had not been in communication with the plaintiff at all.

JUDGE'S FINDING ACCEPTED

The learned judge has fully considered the evidence of S C Chaudhuri, and that of the defendants' witness, Hardless, and with regard to the nineteen signatures on the memorial, he came to the conclusion that it would have been impossible for anyone to have written them unless he knew how to write. He thinks that the plaintiff could not have learned to write after the year 1921, seeing that he does not know the letters, and therefore, the signatures, both English and Bengali, must have been written with a faint memory of at least one of the letters. I think, there is a great deal in the argument put before us on behalf of the plaintiff, that if the plaintiff had been coached with a view to his being able to write the signatures, in all probability he would have been taught as well the letters which made up the names in the signatures, even if he were not taught writing in the ordinary way. I see no reason for disagreeing with the view of the learned judge that knowledge of letters like any other sort of knowledge may be forgotten, and lapse from a bare literacy to illiteracy is by no means an impossible or rare phenomenon. As the judge points out, one, who had tried to learn an Urdu or a Sanscrit script and then not keep it up, would easily forget the individual letters, though he might be able to reproduce a particular word or set of words, such as a signature. Upon a review of the

opinions of the two experts, there seems to me no good reason for dissenting from the finding of the learned judge that the signatures of Ramendra Narayan Roy and the signatures of the plaintiff are by the same hand

LOGICAL WORKING OF JUDGE'S MIND

Despite the criticisms directed against the judgment of the trial court, it seems to me that the more one looks into it, the more one appreciates the logical working of the learned judge's mind. Throughout the judgment, he is endeavouring to arrive at the truth, upon the evidence before him, by a series of stages whereby he, step by step, eliminates in turn aspects of the plaintiff's story, each of which might be sufficient to destroy him. By his findings on the body and mind of the plaintiff, and on the handwriting, he had reduced the problem before him to a point, where he is able to say: "I have examined so far the body and mind of the plaintiff, feature by feature, and seen nothing that displaces the identity proved by direct evidence of the kind stated, and by a collocation of undisputable features, that cannot occur in a second individual. I have found that the handwriting is the same, and the plaintiff is untutored. And thus he reaches the position that he is able to say: 'Nothing, in my opinion, can displace the identity, unless it appears that the second Kumar died at Darjeeling, or that the plaintiff is Mal Singh of Aujla, or not a Bengalee at all'"

PLAINTIFF'S IDENTITY—A PUNJABEE OR A BENGALÉE ?

There now remains, therefore, for discussion this last question of whether the plaintiff is a Punjabee, as the defendants appellants say, or a Bengalee. In looking at this question, one cannot help feeling once again, how extremely unlikely it is that, if Jyotirmoyee Devi had been minded to stage a gigantic imposture, she would have chosen a man of a different race from that of her brother—and a hopelessly illiterate man at that—to play the part of the principal actor in the drama, especially, if as the defendants originally maintained, he bore no resemblance whatever to the character he was destined to represent. Nevertheless, the case made in the defendants' written statement was that the plaintiff is a Punjabee. At the trial, the defendants went further, and endeavoured to prove that he was one Mal Singh of Aujla, a village in the district of Lahore in the Punjab, though this was not put to the plaintiff himself, when under cross-examination. The plaintiff was not asked whether he was Mal Singh, and he was not even asked whether he was Sunder Das, which was the name adopted by him at the time he was initiated as a sannyasi by the *guru*, Dharam Das.

STORY OF THE PUNJAB ENQUIRY

In order to appreciate the evidence given on the question of whether the plaintiff is a Punjabee, it is necessary to go back to the month of May, 1921. The plaintiff had presented himself before Lindsay, the Collector at Dacca, on the 29th May, and had asked for an enquiry. It would appear that either on his own initiative as an outcome of this interview, or possibly because it had been suggested by Satyendranath Banerjee, Lindsay arranged

for a police officer, Sub-Inspector Momtazuddin, and a steward of the Bhowal estate called Surendra Chakravarty to undertake an enquiry in the Punjab for the purpose of ascertaining the identity of the plaintiff, and these two started off to the Punjab on the 31st May, taking with them a photograph of the plaintiff

REPORT OF SURENDRA CHAKRAVARTY

About a month later, namely, on the 27th June, 1921, Surendra Chakravarty sent a report from the Punjab to the Assistant Manager of the Bhowal estate. In that report, he stated that he and "Monmohan Babu", the name assumed by Momtazuddin for the purpose of the enquiry, proceeded to Calcutta, and from there to various places, until they arrived at Hardwar. There Surendra Chakravarty got to know of a sadhu named Hirananda, who was at a place called Kanikhal. Surendra Chakravarty showed the photograph to Hirananda, and a *chela* of the latter at once said that it was a photograph of Santodas, a *chela* of Dharam Das. The same day Surendra Chakravarty and Momtazuddin proceeded to Amritsar, found Hirananda at *Sangawalla Akhwa* at Amritsar, and there they showed the photograph to Hirananda, and to his *chela* Santaram, and Santaram recognised it, as being a photograph of Sunder Das, a disciple of Dharam Das. The report went on to say that Surendra Chakravarty and Momtazuddin proceeded to a place called Chhoto Sansra, some 20 miles from Amritsar, and there they made contact with Dharam Das, they having been informed that Dharam Das was living there. Directly Dharam Das saw the photograph, he recognised the man whose photograph it was, and at the same time a *chela* of Dharam Das, named Deva Das, also recognised it, and both of them said that the man in the photograph was Sunder Das.

According to the report, information was given, "About 15 years ago Naram Singh of Anjla had brought Sunder Das to Dharam Das and got him, then aged 15, initiated as a disciple." On the day on which the report was sent, Dharam Das, Deva Das, Santaram and certain other persons were taken before a Magistrate, and made to identify "the standing photo of Sunder Das." The report stated that the Jaidebpur sadhu is a Punjabee, and a postscript was added saying, "the original name of Sunder Das, and the names of his parents have not been ascertained, but only the name of his uncle." "If the photo of the sadhu in *length*, which was given by Kali Mohan Babu, be that of the Jaidebpur sadhu, he is certainly Sunder Das."

On the 2nd July, 1921, the Manager of Bhowal estate sent to Lindsay an English translation of Surendra Chakravarty's report, with a covering letter in which he said, "They have got some clue to trace out the real identity of the man in the near future." He also said in the letter, "The Board has got conclusive proof about cremation, and as the real identity of the sadhu is about to be ascertained, the proposal, if any, of changing any portion of the notice should be reconsidered." He was referring to the "Impostor Notice" of the 3rd June.

TELEGRAM TO BIBHABATI DEVI

On the 4th July, 1921, the result of the enquiry, as contained in the report, was telegraphed to the manager by Bibhabati, and the telegram said,

"Just received wire saying antecedents traced" The learned judge expresses the opinion that the reason for this telegram saying that the antecedents had been traced is that Momtazuddin went to Aujla on some date before the 1st July, 1921, and verified the information, received at Sansra from Dharam Das on the 27th June, that the plaintiff was Mal Singh, and the learned judge makes the comment that having regard to this telegram, it would be idle to pretend that Satyendranath Banerjee had nothing to do with the enquiry, and it seems to me that that was a reasonable inference to be drawn from the circumstances

STATEMENTS OF PUNJAB WITNESSES

On the 27th June, 1921, Dharam Das Naga made a statement before Raghubir Singh, an honorary magistrate at Rajasansi, a place situated some seven or eight miles from Amritsar. He identified himself as being a *chela* of one Harnam Das, and stated that he resided at Mouza Sansra, thana Aujla in the district of Amritsar, and said, "This picture which has been shown to me is that of my *chela* Sunder Das". According to this Dharam Das, Mal Singh used to live in Mouza Aujla in the district of Lahore, and a cousin of his Naram Singh had brought him to Dharam Das some eleven years previously, and Dharam Das made him his disciple. He then proceeded to give some description of Sunder Das. This statement was proved by Raghubir Singh, and there seems to be no doubt that it was made by a Dharam Das on the 27th June, 1921, after he had seen a photograph which, for purposes of identification, was marked by Raghubir Singh, as P 1. On the same occasion, three other persons made statements after seeing the same photograph. It is obvious that none of these statements could be evidence properly admissible. The details given by Dharam Das who appeared before Raghubir Singh showed that the person he was speaking of belonged to Aujla, and that his cousin was Naram Singh, and his guardians or the people who had brought him up, were Manga Singh and Labh Singh. If, as is to be inferred from what Dharam Das said, this Mal Singh was initiated in 1910, when he was 20 years of age, he would only have been 46 by the time the trial in the court below came to an end.

It has to be recalled that on the 26th August, 1921, the Dharam Das, who was the plaintiff's *guru*, came to Dacca, and went away from there on the 30th August. He left in a somewhat hurried fashion "for fear of the police", as the plaintiff said in his evidence.

COMMISSION EVIDENCE AT LAHORE

In the course of the trial, it was proposed, on behalf of the plaintiff, to prove statements made by this Dharam Das, while he was at Dacca, but the learned judge refused to allow this to be done on the ground that the proposed evidence was not admissible. There was apparently no intimation by either side that Dharam Das was going to be called as a witness, and all that was tendered was the evidence taken on commission of some ten witnesses of Lahore, who had given evidence, with a view to showing that the plaintiff was Mal Singh, identifying him by means of photographs, which were produced before a Commissioner at Lahore.

BOGUS DHARAM DAS PUT INTO THE BOX BY DEFENDANTS

On 21st September, 1935, a man was put into the witness box who said that he was Dharam Das, and that it was he who had made the statement before Raghubir Singh to which reference has been made. This witness said that the plaintiff (who was in court) was his *chela* Sunder Das, and that he was really Mal Singh, and belonged to Aujla. The witness further said that he himself had never been to Darjeeling. It was contended on behalf of the plaintiff that this witness was not the Dharam Das who had been the plaintiff's *guru* during his wanderings, but was a man who had come into the box to personate the *guru*,—and the learned judge, upon a consideration of the evidence which this witness gave, came to the conclusion that he was in fact an impostor, in the sense that he was not the Dharam Das who had been the plaintiff's *guru*, and who had come to Dacca in August, 1921.

CONTRADICTORY DEFENCE EVIDENCE

The learned judge has examined the evidence of the ten persons who were examined on commission in Lahore, with a view to proving that the plaintiff was Mal Singh. These witnesses had given their testimony in October, 1933, and it appears from their evidence that some two years before they gave their evidence, a man named Arjun Singh Pardeshi had interviewed them, and had shown them a photograph which they identified as being that of Mal Singh. All the witnesses, with the exception of two, admit that this was so, and even the two were shown two photographs of the plaintiff—one, where the plaintiff is shown sitting down, and dressed in a *lungi*, and the other being the photo marked D 2 which the judge called "the Gorilla photo" of the plaintiff. The witnesses identified the man in the photographs as being Mal Singh, and they also identified certain other photographs of the plaintiff, including the photographs which were marked P 1, P 2 and P 4. According to their evidence, the Mal Singh they were referring to had no relations at all, except one named Sunder Singh, a son of Mal Singh's sister Akki. This Sunder Singh was said to live at Khandi-wala, the very place from which one of the witnesses Wazir Singh himself came, and as the learned judge points out, there seems to have been no reason why, if Wazir Singh could be brought before the court, Sunder Singh could not have come also. The description and antecedents of Mal Singh referred to by the Lahore witnesses is manifestly quite inconsistent with that given in the statement which was made before the magistrate Raghubir Singh. In the circumstances, therefore, it is perhaps not surprising that the learned counsel for the defendants refrained from putting to the plaintiff, when he was in the box, that he was Mal Singh of Aujla, and the Dharam Das who was put into the witness box was in the plaintiff's (*sic* pitiable?) position of having to give a story which would fit in with what had been said by the witnesses from Aujla before the Commissioner in Lahore, the statement that had been made before Raghubir Singh, and the doings of the admittedly real Dharam Das who made his appearance in Dacca in August, 1921.

STORY OF PROCURING OF DHARAM DAS THE DEFENCE WITNESS

It is interesting to see how the Dharam Das, who gave evidence, had been got hold of. The sub-inspector Momtazuddin was ordered to go to the

Punjab with a view to finding this sadhu, and he took with him a letter from the Commissioner of the Dacca Division, so that he might be given such help as might be necessary by the local police in his task of tracking down a wandering sadhu. Momtazuddin was in Amritsar on 29th July, 1935. Shortly after that, he received information from Arjun Singh Pardeshi, the man who had secured the Anjla witnesses, as to where the sadhu was. The learned judge seems to have thought that Arjun Singh Pardeshi had kept this Dharam Das "ready", as he puts it. Momtazuddin having got this information went off to Simla, with the idea of making use of the letter from the Commissioner of Dacca, and on the strength of it, getting the police authorities to provide him with an order requiring the local police to help him in finding a wandering sadhu.

MOMTAZUDDIN'S PRETENDED SEARCH FOR THE WITNESS

The remarkable thing about all this is that Momtazuddin returned to Dacca without ever having seen the sadhu at all, although he was the only person who could say, if he was the right man, that is to say, the man who had made a statement before Raghubir Singh. One cannot help agreeing with the view taken by the learned judge that the whole journey of Momtazuddin was in effect a pretence, designed to give the idea that the police officer, who had found the sadhu in 1921, was conducting a search for the right witness. Actually, the Dharam Das, who gave evidence in court, came down from the Punjab with Arjun Singh Pardeshi, as he admits. He stayed in a house close to the house of Satyendranath Banerjee, as the latter admits, for some three days, and then went on to Dacca, and ultimately went into the witness-box about five days before the beginning of the vacation in 1935. In his evidence, he said that he had made the statement before Raghubir Singh, and identified before him a copy of the photograph which was marked "a (24)", as being a photograph of his *chela* Sunder Das. This photograph did not have upon it the exhibit marked P 1 which Raghubir Singh had put on the photograph produced before him, and it seems obvious that the statement without the actual photograph shown is quite useless.

IDENTIFICATION OF WRONG PHOTOGRAPH

The explanation given at the trial by the learned counsel for the defendants was that the particular photograph exhibited before Raghubir Singh was in the possession of the defendants, but according to information, given by Surendra Chakravarty and Momtazuddin, the photograph "a (24)" was a copy of the photograph which was identified by the witnesses before Raghubir Singh on the 27th June, 1921. In consonance with that "explanation", the witness Dharam Das said that he was shown the photograph "a (24)", when he was making a statement before Raghubir Singh. As previously stated, in the photograph, the plaintiff is shown in a sitting position dressed in a *lungi*. It is quite evident that somebody, on the side of the defendants, had overlooked the fact that in the report made by Surendra Chakravarty on the 27th June, 1921, it was stated that the photograph shown to the persons who deposed before Raghubir Singh was a "standing photograph". This error was noticed later, and as the witness was still in the box, he then said that the photograph shown by him before Raghubir Singh was not the photograph of a person in a sitting position,

but "the standing photo", and when he was asked why he had previously sworn to the photograph "a (24)", he tried to deny that he had done so, and added that he had been shown this photograph at the time when his "proof" was being taken by a pleader for the purpose of his evidence, and that he had then denied that that photograph was the one exhibited before Raghurir Singh

FALSE DENIAL BY WITNESS

We thus have the remarkable situation that if the witness had made any such denial before giving evidence, nevertheless, in his examination, the photograph "a (24)" was put to him, and he stated that it was the photograph he had seen when before Raghurir Singh, and the learned counsel for the defendants had gone so far as to say that the photograph "a (24)" was actually a copy of the photograph exhibited on the 27th June, 1921. The learned judge thought it was perfectly clear what had really happened. The statement made before Raghurir Singh bears no signature or finger impression of the person who made it. The statement is useless, and means nothing apart from the photograph to which it referred, and that photograph was identified not only by the exhibit mark P 1, but also by the signature of the magistrate himself, and in all probability, it also had upon it, if not the signature, at any rate, a finger impression of the person who made the statement. It is almost inconceivable that a statement of this kind was taken down, and yet not authenticated by any signature or finger impression. One would have expected that Momtazuddin, with his police experience, would have insisted upon that being done, and it would have only been a matter of ordinary prudence to see that it was done.

JUDGE'S CONCLUSION DELIBERATE SUBSTITUTION OF PHOTOGRAPHS

The learned judge came to the conclusion that the photograph marked P 1 must have been the photograph of somebody other than the plaintiff, or else that it had upon it the signature or finger print of somebody other than the witness Dharam Das, and also that this man could not pass himself off as the man that made the statement, nor could the statement adversely affect the plaintiff, unless the photograph exhibited P 1 was kept back, and false evidence made another photograph altogether a part of the statement. The learned judge thinks that the photograph "a (24)" was hit upon, as being suitable for the purpose, but its utility is entirely destroyed by the report of Surendra Chakravarty. I am disposed to agree with the learned judge that the photograph P 1 was not really unavailable. It was not stated in court, in the first instance, that it was not in the possession of the defendants. That was only said later, not by any of the witnesses, but only by the learned counsel for the defendants, no doubt upon instructions that it was missing, and that despite the fact that Momtazuddin had said that the statement and the appropriate photograph were made over by him to Lindsay, and all the papers in connection with the matter of the sadhu, that is to say, the plaintiff, had been kept in a special file. The statement was produced, but not the photograph.

WITNESS DHARAM DAS NOT THE PLAINTIFF'S GURU

The learned judge went so far as to say that this was not merely a trick of the worst kind, this substitution of one photograph for another, but fraud. Without necessarily going so far as that, it is obvious, to say the least of it, that there was such an exhibition of carelessness on the part of the defendants, as was bound to have the most damaging effect upon their case. In the circumstances it was only reasonable that the learned judge should have said "The statement goes off, as it must, without the photo shown to the Dharam Das who made it, and the non-production of it, and the fraudulent attempt to substitute for it another photo, and thus being hit, a third, is, in my opinion, ground for thinking that the statement, that the man in the photo was Sunder Das, was obtained by shewing some photo which is not that of the plaintiff at all, and thus after all is the origin of the name that was fastened upon the plaintiff in the proceedings that followed." It is reasonably clear that if the man who gave evidence in the box is not the man who made the statement before Raghunir Singh, he is not the Dharam Das who was the *guru* of the plaintiff. The learned judge sets out various considerations upon which he ultimately came to the findings that it had not been proved that the plaintiff was Mal Singh of Aujla, and that the witness Dharam Das was not the plaintiff's *guru*.

It was urged by the learned counsel for the defendants that significance ought to be attached to the fact that the plaintiff was never put into the box to deny the identity of the witness Dharam Das. It was suggested that this may have been due to the fact that on religious grounds a *chela* sadhu would have been reluctant to deny his own spiritual master. Whether this is so or not, I do not think it can be said that the fact that the plaintiff was not called upon to repudiate the witness can outweigh the unconvincing, and altogether unsatisfactory, nature of the evidence given by Dharam Das, and it may well be that if the matter was ever considered at all by the plaintiff's advisers, they took the view that the witness had already destroyed himself, and that there was no need for any further action with regard to him. It is, of course, impossible to say what answer the plaintiff would have given, had he been asked whether the witness Dharam Das was his *guru*, and we must leave it at that. It is quite clear to my mind that there is no reason for differing from the findings of the learned judge.

PLAINTIFF'S ABILITY TO SPEAK BENGALI

The learned judge then proceeds to deal with the question whether or not the plaintiff, when he first appeared in Dacca in 1921, was able to speak Bengali. I think there is a great deal in what the learned judge says that if the plaintiff had been living amongst sannyasis, as the plaintiff himself says, and as the learned judge found, for a period of twelve years or so, speaking nothing but Hindi, and living the sort of life the sannyasis live, it would be not unreasonable that he should talk Hindi like his mother tongue, and acquire the accent and intonation of the sannyasis. When, therefore, he resumed Bengali, it was only to be expected that he would break into Hindi. The learned judge was fully cognisant of what it was he had to determine regarding this particular point, and he expressed it by saying "It has to be seen, therefore, whether this Hindi tone and this breaking into Hindi and speaking Bhowal Bengali with a Hindi accent, which is not speaking it like a Bengalee, shows a Hindusthani who has picked up

Bengali, or a Bengalee who has acquired a Hindi manner of speaking", and he proceeded to discuss in considerable detail the relevant evidence, and eventually came to the finding that it was impossible for him to disbelieve the witnesses, who said that the plaintiff did start speaking Bengali in May, 1921, and that they spoke to him and he to them in that tongue. I quite agree with the learned judge in his view that this is borne out, in particular, by the evidence of the witnesses Bhupen Ghosh, K C Chunder and Ghosal

PLAINTIFF FOUND TO BE A BENGALEE

It seems to me extremely unlikely that if the plaintiff had been unable to speak Bengali, he would have made himself so prominent in May, 1921, or have been willing to receive all and sundry who chose to call upon him, and it would appear that at the interview between the plaintiff and Nag in January, 1925, the conversation was carried on in Bengali. In my opinion, there is not sufficient ground for differing from the finding of the learned judge that the plaintiff is a Bengalee. As far as my own somewhat limited knowledge and experience goes, I should have said that, from my own observations of the plaintiff in court and in my chambers, there was nothing in his appearance that would suggest that he was other than a Bengalee.

It is upon a very careful reconsideration of the whole case, as presented before the court below, and after giving due weight to the arguments put forward in the appeal, that I have arrived at the opinions expressed in this judgment, and have come to the conclusion that no sufficient grounds have been made out by the appellants to justify a reversal by this court of the decision of the First Additional Judge of Dacca on the issue of fact.

FINAL SUMMING UP ON WHOLE CASE

That decision was, in the main, based on the view the learned judge took as to the credibility of large numbers of witnesses, and only to a minor degree on inferences or sufficiency of proof. I have endeavoured to explain my reasons for holding that there is nothing in the form of the judgment or in the reasoning of the learned judge to indicate any self-misdirection or inadequate examination and consideration of all the evidence adduced at the trial, and I find myself unable to hold that the judgment was wrong.

I would emphasise once again that in a case of this kind it is vitally important to guard oneself against the possible influence on the mind of prejudice or instinctive ideas as to the probable merits of a claim of the kind made by the plaintiff. It would be altogether wrong to allow one's judgment to be influenced by any such considerations as—"The sadhu must be an impostor", "the plaintiff's story is too preposterous and too absurd to be believed", "the whole thing is impossible", and so on. To do so would be to let suspicion run ahead of the evidence.

We are only concerned with the evidence on the record, and the judge's method of dealing with that evidence. It may be that the defence was weakened by reason of over-zealousness, maladroitness and indiscretions on the part of the defendants' agents and/or advisers and other persons connected with the matter, not only in the years before the suit began, but also in connection with the actual legal proceedings. I have in mind such things as the rather precipitate "Impostor Notice" the unfortunate "Jai sadhu

order" (which Mr Chaudhuri himself deplored) the deliberate intimidation of persons who were or might be potential witnesses the methods of securing or endeavouring to secure "common form evidence" "Phani's diary" the manner of putting material before S C Chaudhuri for the purpose of obtaining his opinion and lastly, the character of the investigation in the Punjab the juggling with the photographs and the putting into the witness box of a seemingly spurious Dharam Das

It is certainly a significant feature in the case that the Court of Wards, despite all the resources at their disposal (as the learned judge did not fail to note), and despite all the time there was in which to do it, were never able to produce any real evidence that the plaintiff was some one other than the man he claimed to be

"Phani's diary" and the manoeuvres with S C Chaudhuri undoubtedly recoiled on the defendants The glorified image of the second Kumar as originally erected by the defence, and supported or sought to be supported by Phani's elaborately prepared embroideries, proved to be something in the nature of a Frankenstein for many of the defendants' witnesses The attempt to prejudice the opinion of S C Chaudhuri in favour of the defendants afforded added weight to that opinion, when it turned out to be, if not wholly adverse, at least not altogether favourable Moreover, it is possible, I think, that the general attitude of the Court of Wards and its officers in the course of the long years before the trial may have reacted on the minds of the people of Dacca in a way which created not only sympathy for the claimant, but augmented the numbers of his adherents As to that, one cannot and must not speculate or express any opinion, save in so far as it bears on the question of the delay on the part of the plaintiff in bringing his suit

PLAINTIFF'S DELAY IN INSTITUTION OF SUIT

Normally, delay in seeking to enforce alleged legal rights may indicate lack of *bona fides* or a desire for time to prepare and work up a case,—a false case,—as it did in the Tichborne case, but on the other hand, it is notorious that in India there is almost a universal tendency in "title" matters not to resort to proceedings at law until the last possible moment before the expiry of the relevant period of limitation, and so the delay before action was brought in the present instance does not, to my mind, materially affect the genuineness of the plaintiff's claim, particularly having regard to the aspect of the matter referred to by the learned trial judge when he said "False hopes were raised by Mr Lindsay and Mr K C De, as their statements show" That statement, in my view, was perhaps putting the matter a little too high, but the underlying idea was, I think, amply justifiable

It cannot be disputed that from the very beginning after the declaration of identity the plaintiff came well out into the open, and not only did not shrink from investigation but actually courted it A demand on his side for an enquiry was made within a few days after the 4th May, 1921 The plaintiff presented himself before Lindsay in that same month and risked the possibility of instant discomfiture and exposure In 1922, Satyabhama Devi asked for an enquiry In 1923 Jyotirmoyee Devi asked K C De for an enquiry In 1926 there was the plaintiff's memorial for an enquiry It is, of course, the fact, as Mr B C Chatterjee frankly admitted to us, that the memorial depicts quite a different picture from that displayed at the trial, but one does not know whether or to what extent it may not owe some of

its colouring to the artistry or artfulness of the draftsman of it, though no doubt its foundations were supplied by the plaintiff himself

One cannot help feeling that throughout the period between 1921 and 1930, each side, if not exactly manœuvring for positions, was at any rate waiting for the other to begin, the position being something in the nature of a 'standstill war', if one may so describe it. I think there is considerable justification for the learned judge's view that the plaintiff was not to be faced or prosecuted, even though he was creating or at any rate causing "no end of trouble", and was collecting money "in the guise of rent", as K C De put it, and was receiving *nazar* and acquiring *chanda* (subscriptions) to such a degree that in the years 1929 and 1930 the collection by the estate was brought to cessation. No serious efforts were made to put an end to the plaintiff's activities by means of legal proceedings, either civil or criminal, other than the minor proceedings in the course of which the "*Jal Sadhu* order" was made. Those responsible for the management of the estate might, one would have thought, have considered it desirable to bring the matter to a head by instituting proceedings for an injunction to restrain the plaintiff from intermeddling with the estate. As the result of their comparative inaction, the plaintiff was able to consolidate his position and to get his status recognised to such a degree that he was widely received in society, not only in Dacca but in Calcutta, as the evidence shows.

Whatever the reason may have been that operated in the minds of the officials of the Court of Wards, the fact remains that, as the learned judge puts it, the plaintiff was not faced or questioned or prosecuted. The learned judge was of opinion that somebody wanted this state of things, and that the person behind it all and responsible for the inaction, such as it was, was Satyendranath Banerjee, who admittedly had prospered exceedingly from the use and enjoyment of Ramendra Narayan Roy's share in the estate. In the circumstances, Satyendranath Banerjee would be bound to regard the return of Ramendra Narayan Roy as a calamity of the first magnitude.

It seems to me that the learned judge was quite justified in saying that Satyendranath Banerjee knew on the 6th May, that is, two days after the plaintiff's declaration of identity, when there was no knowing what support the plaintiff was going to receive, that his (Satya's) only chance of defeating the claimant was to concentrate on "death". Satyendranath Banerjee rushed off to Lethbridge, then Secretary of the Board of Revenue, and handed to him the copies of the affidavits of death which he had preserved. It is significant that he should have had them in his possession at all. Then, Satyendranath Banerjee goes off to Darjeeling before the 15th May, 1921, as the judge says, "to pin down the witnesses to a cremation, which they had unsuspectingly joined in, before memory had got to work and given meaning to things that seemed odd". He took care to send to Lindsay the affidavit of death and the evidence of cremation, and then the impostor notice of the 3rd June, 1921 was issued. This seems to have given birth to the notion, shared by many of the witnesses, that the matter at issue was not merely one between the plaintiff and Bibhabati Devi, but between the plaintiff and the Government. Despite the impostor notice, the plaintiff continued on his course, openly going about seeing people and receiving all kinds of visitors, and at the same time seeking official investigation and enquiry.

All this is very germane to the question of delay, and militates against Mr Chaudhuri's arguments on this point and his contention that time was

needed for the purpose of the plaintiff fitting himself, or being made fit, to play the part of Ramendra Narayan Roy. If the plaintiff had done nothing in the way of attempting to establish himself formally as Ramendra Narayan Roy, the lapse of time between the declaration of identity and the institution of the suit would certainly have told heavily against him. In the circumstances, the delay such as it was should not in my opinion adversely affect the plaintiff's claim.

Summing up my views on the issue of fact before the court, I would say that I am quite satisfied that the learned trial judge was fully sensible of the gravity of the issue he had to try and of the difficulty of some of the manifold questions that arose in the suit, and that he gave careful attention and consideration to the evidence and arguments before him.

After thinking long and deeply upon the matter, and upon a careful and even anxious review of the whole case, I find myself unable to do otherwise than come to the conclusion that this court would not be justified in disturbing the findings of the learned trial judge as summarised by him at the end of his judgment, and which have been reproduced in the early part of this judgment.

I would here add that I have had the opportunity of reading the greater part of the comprehensive judgment written by my brother Biswas, and I am able to say that I agree with his reasoning generally, and with the conclusions at which he has in consequence arrived.

LIMITATION

It is necessary to say a word or two on the one point of law in the case which was designated "Issue 2" Limitation. The question was not seriously pressed in the argument before us, at any rate, very little time was devoted to it,—probably for the reason that the learned counsel for the defendants did not regard it as having much substance. Obviously, Ramendra Narayan Roy was in possession of his share of the Bhowal estate until the 8th May, 1909, when he disappeared and was supposed to have died, and so on the basis of the finding of fact as to the identity of the plaintiff, the plaintiff was in possession of the property he claims at the date just mentioned. Bibhabati Devi purported to succeed to that property as the widow of Ramendra Narayan Roy, and accordingly held what she believed to be a widow's estate under Hindu law. The contention put forward in the case was that she had been in possession as from May, 1909, and so for more than 12 years prior to the institution of the suit, therefore, the suit was barred by limitation. It must here be borne in mind that until the appearance of the plaintiff in Dacca she was only holding the one-third share in the estate as a Hindu widow, and not otherwise. It may be assumed that after the plaintiff's declaration of identity on the 4th May, 1921, Bibhabati Devi's possession became adverse to the plaintiff, seeing that he was kept out, although he was claiming to be Ramendra Narayan Roy and so the husband of Bibhabati Devi.

In my opinion, it is not possible to hold that in the years between 1909 and 1921, that is to say, during the absence of the plaintiff, Bibhabati Devi was prescribing as against him for a Hindu widow's estate, believing all the time that he was dead. Bibhabati Devi never asserted a right to anything more than a widow's estate, and therefore, it must be taken, I think, that

she was really holding the one-third share on behalf of her husband that being the juristic theory under the principles of Hindu law. This is borne out by the fact that under the law, if the husband had been dead, his heirs would have succeeded on the death of Bibhabati Devi. If her possession operated as "adverse" *vis a vis* the husband, whom in theory of the law the "widow" represents, having regard to the nature and extent of her estate, the anomalous position would arise that the heirs of the husband would come in and take on the demise of the holder of the "widow's estate", though the husband himself was shut out.

I am of opinion that the view taken by the learned judge was correct, and the suit was not barred by limitation.

Before bringing this judgment to a close, I would wish to express my appreciation of the ability and skill with which the appeal was argued by the learned counsel on both sides, and to thank them for their assistance and unfailing courtesy to the court throughout the long and trying hearing.

As Mr Justice Biswas and myself are in agreement, the order of the court must be that the appeal is dismissed with costs.*

* Certified at the India Office, London, by the Secretary, Public and Judicial Department, for legalisation of Costello, J's signature, dated the 25th June, 1940.



SINHAJI CHADANT



SECOND KUMAR (Plaintiff)

FINAL DECISION OF COURT

The 25th November, 1940

BISWAS, J —Three separate judgments were prepared in this case by the three judges who had heard the appeal, and they were all read in open court before the long vacation. I drew attention at the time to the circumstances in which Costello, J's judgment had been sent out by him from England to be read by us in his absence, and I referred also to the recent rule framed by this court under which the written judgment of a judge could be pronounced by another, in case the former was prevented from doing so himself by reason of his absence. The question arose whether in view of the facts which I then stated and in view of a Full Bench ruling of this court (*9 Weekly Reporter 1*) any infirmity attached to Costello, J's judgment which rendered it invalid in law, and if so, whether or how far this would affect the decision of the appeal. I indicated the grounds on which, in my opinion, as then advised, the validity of that judgment was open to question, and my learned brother Lodge, J expressed a contrary view. This was a new point, and arguments were accordingly reserved on this question till after the re-opening, the passing of final orders of the court on the appeal being necessarily deferred.

A MISAPPREHENSION CORRECTED

The matter has now been argued at length before us, and it is for us to pronounce the final decision of the court. Having heard the parties, it seems to me that the question must ultimately depend on the applicability of the Full Bench ruling to the facts of this case. Regarding one matter, there appears to be a misapprehension on the part of the appellants, which I think ought to be corrected at once. It is not a fact that the three judges had no opportunities of joint discussion or did not have such discussion on the various points in the case. As my learned brother Lodge, J has pointed out, such discussion had in fact proceeded continuously till the very end, but while as a result thereof, both he and I found ourselves in a position to indicate to Costello, J our respective views, our learned senior on his part did not tell us finally what was going to be his decision. The result was that at the time we dispersed after the hearing, it was not known whether the appeal would be ultimately decided in favour of the plaintiff or of the defendants, and this uncertainty continued in fact till Costello, J's judgment was read. But as I indicated, there had been sufficient discussion among us all, from which I at any rate was able to form the idea that he was on the whole in agreement with me. The reason why he was still unable to announce to us his ultimate decision before he left may well have been that he wanted further time to consider some of the points which did appear to present difficulty in the way of the plaintiff's case, but it would be wrong to suppose that these points had not been discussed. Personally speaking, I felt that without further discussion he could ultimately come to one conclusion only, namely, that which he has actually reached and expressed in his judgment, and that if he were to hold to the contrary, he would not be justified in so doing without further consultation with his colleagues. I think I had made

this sufficiently clear in my previous statement This is how I expressed myself then —

“If I am right in believing, as I do, that Costello, J's tentative views were in accord with those I have expressed, *and if it turns out now he has since revised his opinions*, the absence of an opportunity by further discussion and argument to have influenced his final judgment would indeed be a matter of consequence, affecting the final result of the appeal”

In that case, I added, if I had correctly interpreted the Full Bench ruling, it would not be a matter to be brushed aside as a mere technicality, but would be an objection striking at the very foundation of the so-called judgment, or opinion, as I preferred to call it

In the events which have happened, therefore, in my opinion there would be nothing to complain of regarding Costello, J's judgment in the sense that it had been arrived at without that consultation and conference with his colleagues which was essential to ensure its validity as a judgment within the meaning of the Full Bench case, as I understood it

APPLICABILITY OF FULL BENCH RULING

In this view of the matter, I do not find myself called on to consider what would have been the effect of the Full Bench decision, if the facts were otherwise It may well be, as the respondent contends, that the generality of the expressions used by Peacock, C J in laying down the rule, which furnishes the foundation for the objection to Costello, J's judgment, is to be qualified by the particular facts of that case it may also be right to say that the ground for the decision as given by the several judges composing the Full Bench was not the same, whereas the common ground underlying all the opinions was the fact that the three learned judges, the validity of whose judgments was in question, had ceased to be members of the court, which fact is absent in the present case It may again be possible to distinguish the Full Bench case, as my learned brother Lodge, J suggests, on the ground that the written opinions there were merely deposited with the Registrar preparatory to their being read out by the judges themselves at the time of delivery of judgment, which *ipso facto* implied the possibility of their being able to revise their opinions till the very last moment before delivery, if they so desired, while in the present case, on the other hand, there can be no question that Costello, J sent out his judgment, signed and authenticated, intending that it should be treated as his final pronouncement and read in court as such at the time of delivery of judgment

As I have said, however, on the facts of the case as they have transpired, and on my reading of the Full Bench ruling, it should not be necessary for me to express any opinion on any of these points, interesting as they are, and strenuously as they have been canvassed before us

The only question that on the appellants' argument requires consideration in the circumstances of the case is, whether or not the fact that Costello, J had not intimated to us his final opinion as to the decision to be given in the appeal before he left, or that he actually completed his judgment in England without further reference to his colleagues would be sufficient to bring the case within the mischief of the rule laid down by the Full Bench I do not think it should Taking the principle as enunciated by Sir Barnes

Peacock to be the basis of the decision in that case, it would in my opinion not be right to put on it an unduly restricted interpretation which would reduce it to a mere rule of technicality this would only hinder, and not help, the due administration of justice which, as the learned Chief Justice pointed out, was the *raison d'être* of the rule in question The test should be whether or not the judgment which is sought to be impugned in fact reflects the result of joint conference and discussion between the judge concerned and his colleagues, and is intended to be his final pronouncement I am unable to see how from this point of view, Costello, J's judgment may now be regarded as desiderating the conditions postulated by Peacock, C J

On one point we were all fully agreed, namely, that there was no possibility of our arriving at a unanimous judgment so far as my learned brother Lodge, J and I were concerned, our views were definitely divergent, and this was known to Costello, J, and accepted by him as a final fact before he left All that remained for him was to make up his mind finally whether he should agree with me in dismissing the appeal or with my brother Lodge, J in allowing it, but as I have already said, the indications, so far as I could gather, were all in favour of his concurring with me in his conclusions He left us in no doubt as to the points of difficulty which seemed to be still pressing him, but he was in full possession of the respective views which we two held on these points These views had been unequivocally expressed at our joint conferences while our learned brother was still in India, and they were subsequently embodied in the draft judgments which were despatched to him In the result, as it now turns out, the conclusions recorded by him in his judgment fully coincide with what I had understood to be his views at the time he left, and there was consequently no occasion for a further exchange of views In substance, therefore, as I understand the Full Bench ruling, Costello, J's judgment satisfies the test laid down therein

EFFECT OF COSTELLO, J'S ABSENCE

It is not necessary, however, to discuss this aspect of the matter further, for, having heard the parties, we are satisfied that the question before us may be disposed of on the short and simple ground that it is not a question which it is competent to us to entertain It is conceded that the mere fact that Costello, J was not present in court in person at the time judgment was delivered would not affect the legal position Apart from the new rule, there is precedent for the view that where a judge is absent on leave or on deputation, but continues to be attached to the court, his judgment may be pronounced by another judge in his absence See, for instance, the cases of *Adwaitya Charan Chowdhuri v Sorajnanjan Chowdhury*, A I R (1917) Cal 494, same case on L P appeal, *Saraj Ranjan Choudhury v Premchand Choudhury*, (1917) 22 C W N 263 (pp 271-272), *Meyappa Chettiar v Chidambaram Chettiar*, A I R (1925) Mad 58 (with reference to the Full Bench judgment in the same case, (1923) I L R 47 Mad 483) See also *Satyendra Nath Ray Chaudhuri v Kastura Kumari Ghatwahn*, (1908) I L R 35 Cal 756 (F B)

The result, therefore, is that this appeal having been heard by three judges of this court, and they being divided in opinion as to the decision to be given, the appeal should be decided in accordance with the opinion of the majority of the judges under section 98 of the Code of Civil Procedure or clause 36 of the Letters Patent, whichever may apply

As in the opinion of Costello, J the appeal should be dismissed with costs, and as this is also my opinion, the order of the court will consequently be that the judgment and decree of the court below be and are hereby affirmed, and the appeal do stand dismissed with costs

LODGE, J—I agree that the appeal must be disposed of in the manner indicated by my learned brother Biswas, J I wish, however, to make one point clear In spite of the observations of Peacock, C J, in the case reported in *9 Weekly Reporter*, p 1, I am unable to hold that the validity of a judgment which has been delivered in a legal manner can be challenged on the ground that there was either no consultation or insufficient consultation amongst the judges of the Bench before the judgment was so delivered

Appeal dismissed with costs

DECREE OF THE HIGH COURT

IN THE HIGH COURT OF JUDICATURE AT FORT WILLIAM IN BENGAL

APPELLATE CIVIL JURISDICTION

Appeal from Original Decree No 1 of 1937

Appeal preferred on the 5th day of October, 1936, against the decree of Pannalal Basu, Esq., Additional District Judge, 1st Court of Zillah Dacca, in Title Suit No 38 of 1935, dated the 24th day of August, 1936

Sm Bibhabati Devi, defendant No 1,
Sriman Ram Narayan Roy, Proforma defendant No 3,
Sm Ananda Kumari Debi, Proforma defendant No 4,
Wards of Court represented by Rai Sahib U N
Ghosh, Manager, Court of Wards
and

Sm Bibhabati Devi (Debi in Vakalatnama) in her
individual capacity *Appellants,*

versus

Ramendra Narayan Roy, Plaintiff, *who appeared* *Respondent,*
and

Sm Sarajubala Debi, a ward of Court represented by
Rai Sahib U N Ghosh, Manager, Court of Wards,
Proforma defendant No 2, *who did not appear in*
this appeal *Pro-forma Respondent*

Appeal valued at Rupees 1,52,000/-

Upon this appeal coming on for hearing before a Division Court
composed of—

The Hon'ble Sir Leonard Wilfred James Costello,

The Hon'ble Charn Chandra Biswas, and

The Hon'ble Ronald Francis Lodge,

Three of the Judges of this Court,

On the 14th, 15th, 16th, 17th, 18th, 21st, 22nd, 28th, 29th, and 30th days of November, 1938, and 1st, 2nd, 5th, 6th, 7th, 8th, 9th, 12th, 13th, 14th, 15th, 16th, 19th, 20th, 21st, and 22nd days of December, 1938, and 3rd, 4th, 5th, 6th, 9th, 10th, 11th, 12th, 13th, 16th, 17th, 18th, 19th, 20th, 23rd, 24th, 27th, 30th, and 31st days of January, 1939, and 3rd, 6th, 7th, 8th, 9th, 10th, 13th, 14th, 15th, 16th, 17th, 20th, 21st, 22nd and 27th days of February, 1939, and 3rd, 6th, 7th, 8th, 9th, 10th, 13th, 14th, 15th, 16th, 17th, 20th, 21st, 22nd, 23rd, 24th, 27th, 28th, 29th, 30th and 31st days of March, 1939, and 3rd, 4th, 5th, 6th, 18th, 19th, 20th, 21st, 24th, 25th, 26th, 27th and 28th days of April, 1939, and 1st, 2nd, 4th, 5th, 8th, 9th, 10th, 11th, 16th, 17th, 18th, 19th, 22nd, 23rd, 24th, 26th, 29th and 30th days of May, 1939, and 1st, 2nd, 5th, 6th, 7th, 9th, 12th, 13th, 14th, 15th, 16th, 19th, 20th, 21st, 22nd, 23rd, 26th, 27th, 28th, 29th and 30th

days of June, 1939, and 3rd, 4th, 5th, 6th, 7th, 10th, 11th, 12th, 13th, 14th, 17th, 18th, 19th, 20th, 21st, 24th, 25th, 26th, 27th, 28th and 31st days of July, 1939, and 1st, 2nd, 3rd, 4th, 7th, 8th, 9th, 10th, 11th and 14th days of August, 1939, and for pronouncement of judgment before the Hon'ble Mr Justice Biswas and the Hon'ble Mr Justice Lodge on the 20th, 21st, 22nd, 23rd, 24th, 27th, 28th and 29th days of August, 1940, and 22nd and 25th days of November, 1940 And the three Judges of the Court being divided in opinion as to the decision to be given *It is ordered and decreed in accordance with the opinion of the majority of the Judges that the Judgment and Decree of the Court below be and the same are hereby affirmed, and this appeal dismissed* And it is further ordered and decreed that the appellants do pay to the respondent who appeared the sum of rupees one thousand three hundred and nine and annas twelve only (as per details at foot) being the amount of costs incurred by him in this Court with interest thereon at the rate of 6 per cent per annum from this date until realisation

Dated this 25th day of November in the year of Our Lord one thousand nine hundred and forty

	Respondent's costs			
	Rs	AS	P	
Hearing fee	1,000	0	0	SD L W J Costello, Judge, 5-2-41
Court fee for Vakalatnama	2	0	0	
Paper Book costs	223	12	0	
Costs in Rule 1361(F) of 1936 disposed of on 18-12-36	84	0	0	C C Biswas R F Lodge
Total	1,309	12	0	

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